No. 79-1907

In the Supreme Court of the United States

OCTOBER TERM, 1980

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

PORTLAND CEMENT COMPANY OF UTAH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

Petition for Writ of Certiorari Filed June 3, 1980
Certiorari Granted October 6, 1980

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UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 6306-73

PORTLAND CEMENT COMPANY OF UTAH, a corporation
(Edwin S. Gallacher, President)
615 West 8th South Street, P.O. Box 1469
Salt Lake City, Utah, 84110 PETITIONER,

VS.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

APPEARANCES FOR PETITIONER:
Glen E. Fuller, 15 East 4th South Street,
Salt Lake City, Utah, 84111
Jack R. Decker, 15 East 4th S. St.,
Salt Lake City, Utah, (E/A, 1-20-75)

Date	*Filings and Proceedings*	*Action*	*Served*
Aug. 20, 1973	PETITION FILED: FEE PAID August 20, 1973		Aug. 21, 1973
Aug. 20, 1973	REQUEST by petr. for trial at Salt Lake City, Utah filed	GRANTED Aug. 21, 1973	Aug. 21, 1973
Sept. 13, 1973	ANSWER by Resp. filed.		Sept. 17, 1973
Oct. 17, 1974	NOTICE OF TRIAL on Jan. 20, 1975 at Salt Lake City, Utah.		Oct. 17, 1974
Jan. 20, 1975	TRIAL at Salt Lake City, Utah before Judge Fay.		
	ENTRY OF APPEARANCE by J. R. Decker as counsel for Petr. filed, Jan. 20, 1975.		FEB 21 1975
	STIPULATION OF FACTS and Exhibits, filed.		
	ORIGINAL BRIEFS DUE: March 20, 1975		
	REPLY BRIEFS DUE: April 21, 1975		
	SUBMITTED TO JUDGE FAY		
Feb. 4, 1975	TRANSCRIPT of Jan. 20, 1975 received.		

Date	*Filings and Proceedings*	*Action*	*Served*
Mar. 20, 1975	BRIEF for Resp., filed.		MAR 24 1975
Mar. 20, 1975	BRIEF for Petr. filed.		MAR 24 1975
April 18, 1975	REPLY BRIEF for Petr. filed.		APR 22 1975
April 21, 1975	REPLY BRIEF for Resp. filed.		APR 22 1975
May 9, 1977	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Fay. (Decision will be entered under Rule 155.)		May 9, 1977
June 8, 1977	MOTION by Resp. for Reconsideration of Findings and Opinion filed May 9, 1977. (Exhibit Attached)	MOOT See Order Nov 21, 1977	
June 9, 1977	ORDER, that counsel for Petr. shall have to July 15, 1977 to file any objection to Resp's. motion filed June 8, 1977.		JUN 10 1977
Jul 1, 1977	OBJECTION by Petr. to Resp's. motion for reconsideration of findings and opinion filed.		
Sep 16, 1977	JOINT MOTION to Reopen the Record. (Supplemental Stipulations of Fact Lodged)	GRANTED Sep 23, 1977	SEP 28 1977
Sep 23, 1977	SUPPLEMENTAL STIPULATIONS OF FACT filed.		
Nov 11, 1977	AGREED COMPUTATION filed.		
Nov 21, 1977	ORDER, that resp's. motion for reconsideration of findings and opinion filed Jun 8, 1977 is rendered moot.		NOV 22 1977
Nov 22 1977	DECISION ENTERED, Judge Fay.		Nov 22, 1977
	APPELLATE PROCEEDINGS		
Feb. 17 1978	NOTICE OF APPEAL to U.S.C.A., Tenth Circuit, filed by Resp.		Feb. 21, 1978
Feb. 21, 1978	NOTICE of Filing with copy of notice of appeal mailed to Mr. Glen E. Fuller, counsel for petr.		Feb. 21, 1978
Feb. 21, 1978	NOTICE to parties of assembling and date for transmission of the record.		Feb. 21, 1978

Date	*Filings and Proceedings*	*Action*	*Served*
Feb. 21, 1978	CERTIFIED copy of notice of appeal mailed to U.S.C.A. Court of Appeals for the Tenth Circuit.		
Mar. 15, 1978	MOTION to extend the time for transmission of the record to May 18, 1978, filed by Resp. with "No Obj." by Petr.	GRANTED 3/15/78	Mar. 16, 1978
Mar. 16, 1978	NOTICE, to parties, of assembling and extension of date for transmission of record.		Mar. 16, 1978

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
TENTH CIRCUIT

CASE NO. 78-1290

CIVIL B
APPEAL FORM THE UNITED STATES TAX COURT

TITLE OF CASE

PORTLAND CEMENT COMPANY OF UTAH, a corporation, Petitioner-Appellee,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellant

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CASE NO. 78-1290

Portland Cement Company of Utah v. Commissioner of Internal Revenue

Date	*Filings—Proceedings*	*Filed*
4/17/78	Cause docketed; docketing statement—0 & 9 cc, c/s.	
4/26/78	Appearance—appellee—Glen E. Fuller	
*4/27/78	Appearance—appellant—Stuart E. Seigel	
5/15/78	Record on appeal—Volume I (pleadings) (109pp), Volume II (transcript) (63pp), Exhibits (in manila envelope)—Orig. (172++pp)	
5/16/78	Order—assigned to Calendar B; appellant's brief due 6/6/78—Seth	
*5/6/78	Appearance—appellant—M. Carr Ferguson, Gilbert E. Andrews	
6/5/78	Appellant's mot for ext to 7/6/78 to file brief, Order—appellant GRANTED to 7/6/78 to file brief—RLH—cnsl notf'd	
7/10/78	Appellant's brief, 0 & 9 cc, c/s Appearance—Appellant, Wiprud, Carmack	
7/27/78	Appellee's brief, orig. & 9 cc., c/s	
10/18/79	HRG.SET Hearing set for November, 1979, Term—Denver, Colorado	
11/30/79	CS.ARG.SUBM—case argued and submitted to Seth, McKay, Logan	
2/5/80	PC.OPN.F. Per curiam opinion filed—Seth, McKay, Logan (Published) JM. DISP. Judgment affirmed.	
2/27/80	MDT.ISS—mandate issued to District Court	

Date	*Filings—Proceedings*	*Filed*
2/29/80	ROA.RMK. Letter re record to Judge Seth	
2/6/80	ROA.RTN.DC. Record on appeal returned to Dist Ct. Vol. I-II and Brown envelope of exhibits	
3/14/80	ROA.RCPT.F. Record receipt filed.	

[Postmeter stamp 8/15/73]

THE TAX COURT OF THE UNITED STATES

DOCKET NO. 6306-73

[Filed August 20, 1973]

PORTLAND CEMENT COMPANY OF UTAH, a corporation, Petitioner,

vs

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (Correspondence Symbols L—21, Code 411) dated May 23, 1973, and as a basis of its proceedings alleges as follows:

1. The petitioner is a Utah corporation and has its business address at 615 West 8th South Street, P.O. Box 1469, Salt Lake City, Utah. The returns for the periods here involved were filed with the Internal Revenue Service Center for the Western Region, Ogden, Utah.

II. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A), was mailed to petitioner on May 23, 1973.

III. The deficiency as determined by the Commissioner involves income taxes for the fiscal year ended March 31, 1970, in the amount of $44,200.00; and for the fiscal year ended March 31, 1971, in the amount of $41,509.00; and for the fiscal year ended March 31, 1972, in the amount of $7,175.00. The foregoing amount to a total deficiency for the three years involved of $92,884.00, of which the entire amount of the deficiency for each fiscal year is in dispute.

IV. The determination of tax deficiencies set forth in the said notice of deficiency is based upon the following errors:

(a) In applying the "proportionate profits" formula, the Commissioner, although excluding costs of shipping, storage, bagging and related activities in arriving at an amount attributable to the "first marketable product" (i.e. bulk cement), has failed to follow the mandate of the Tenth Circuit Court of Appeals decisions in the cases of *U.S. v. Ideal Basic Industries, Inc.*, 404 F.2d 122, 22 A.F.T.R. 2d 5438, (Cert. Den.) 395 U.S. 936, 89 S. Ct. 1997) and *U.S.* v. *Portland Cement Company of Utah*, 412 F.2d 894, in that a "profit" factor and an allocation of indirect costs have been improperly and erroneously considered so as to have the effect of eliminating more than the sole allowable direct costs of storage, bagging, shipping and related activities from the "proportionate profits" formula.

(b) In the treatment of the so-called "additivies" the Commissioner has disregarded prior Findings of Fact embodied in prior litigation involving this taxpayer and its income tax returns for prior years before the U.S. District Court for the Central District of Utah and the U.S. Court of Appeals for the Tenth Circuit, including the two cases referenced in the proceding sub-paragraph (a).

(c) The Commissioner has determined the deficiencies in each of the three years involved insofar as the same involve the so-called "additives" in a manner which violates well recognized accounting procedures, his own "proportionate profits" formula, and sound economic theory and practice; that the Commissioner's computations in arriving at the claimed deficiencies contain inconsistencies which destroy the formula which he uses, the formula magnifies the profit aspect and pre-kiln and post-kiln costs attributable to processing such so-called "additives" out of proportion to reality, and the Commissioner has failed to apply consistency throughout his "proportionate profits" formula in arriving at the percentage which mining costs bear to total costs of producing bulk cement (i.e. the first marketable product).

(d) There is no statutory or legal basis for applying the 50% limitation to taxable income in situations where the "proportionate profits" method of determining depletion is used.

(e) As to the fiscal year ending March 31, 1972, wherein there has been disallowed the sum of $2,734.00 as an expense for entertaining customers, petitioner affirmatively alleges that error has been committed for the reason that said amount, together with the balance of its entertainment expense deduction, was an ordinary, necessary and reasonable business expense expended in carrying on petitioner's business.

V. The facts upon which petitioner relies as the basis of this proceeding are as follows:

Pursuant to statutory law, prior and existing regulations of the Commissioner, decisions of the Tenth Circuit Court of Appeals (including those heretofore referred to), and accounting and economic theory, the "first marketable product" of this petitioner is bulk cement; that all subsequent costs in the distribution, storage and sales of such product, including bags and baggings, etc. are not "processes" to which said costs should be included in arriving at the percentage applicable under the "proportionate profits" formula.

In prior court cases involving the depletion matter respecting federal income taxes for prior years of this taxpayer it has been recognized that the purchased materials used by petitioner in making cements are simply "balancers" rather than additives, and that the bulk of these materials are simply basic cement—making ingredients which, when combined, produce cement by the application of the same processes applied to petitioner's own "cement rock." The processing costs of the "balancers" used are essentially the same—although slightly higher due to the differing physical characteristics of the purchased materials—as those applicable to processing petitioner's own "cement rock" into bulk cement.

Since petitioner is obligated to use the "proportionate profits" formula in arriving at gross income from mining and its ultimate depletion allowance, it is submitted that a percentage be arrived at showing the relationship between the volume of its own "cement rock" utilized and the volume of its purchased materials used as "balancers"; then, utilizing this percentage to all pre-kiln and post-kiln processing costs at and after the point where all materials merge together in the cement-making process, a correct result can be reached reflecting the profit attributable to petitioner's own "cement rock." By utilizing receipts from the sales of the "first marketable product" i.e. bulk cement, and excluding the costs of shipping, storage, bags and bagging and related items incurred after the first marketable product has been produced, it as then possible to arrive at the proper depletion allowance.

The method utilized by petitioner in preparing its corporate income tax return for the fiscal year ending March 31, 1972 reflects the proper procedure to be utilized.

With reference to the disallowed entertainment expenses petitioner will establish that the expenditures were directly related to the ordinary and necessary expenses normal to the conduct of its business in that the expenditures were made for the sole purpose of selling cement to customers in areas of Utah outside Salt Lake City; that none of the customers were in any sense social contacts of the company or of any of its officers or employees; that the affected customers were highly disposed to hunting, fishing and outdoor activities—and were not susceptible to being entertained or generally contacted for business purposes via other normal entertainment means; and that cement sales and related business matters constituted a very substantial portion of all conversations and discussions between the company president and the customers involved.

* * * * *

WHEREFORE, petitioner prays that this Court hear the proceeding and determine the actual amount of any tax

due from the petitioner for the three fiscal years here involved.

/s/ _____

GLEN E. FULLER
Counsel for Petitioner
15 East 4th South Street
Salt Lake City, Utah

* * * * *

[Verification omitted in reproduction]

Department of the Treasury

District Director
Internal Revenue Service

Date: MAY 23 1973 | In reply refer to: L-21, Code 411

Portland Cement Company of Utah
P. O. Box 1469
Salt Lake City, Utah 84110

CERTIFIED MAIL

Gentlemen:

Tax Year Ended:	Deficiency
3/31/1970	$44,200.00
3/31/1971	$41,509.00
3/31/1972	$ 7,175.00

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,
Randolph W. Thrower Raymond F. Harless
Acting Commissioner
By

Roland V. Wise
Roland V. Wise
District Director

Enclosures:
Waiver
Statement
Envelope

Form L-21 (Rev. 5-70)

FORM 4607 (REV. MAY 1970)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE STATUTORY NOTICE STATEMENT	SYMBOLS L-21 A:NM:LOD:es

PORTLAND CEMENT COMPANY OF UTAH

P. O. BOX 1469

SALT LAKE CITY, UTAH
84110

KIND OF TAX

INCOME TAX

TAX YEAR ENDED	DEFICIENCY
3/31/1970	$44,200.00
3/31/1971	$41,509.00
3/31/1972	$ 7,175.00

☐ Copy to Authorized Representative

FORM 3613 (REV. JULY 1968) | DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE | STATEMENT SCHEDULE

CORPORATION INCOME TAX

1

NAME	TAXABLE YEARS ENDED		
Portland Cement Company of Utah	3/31/1970	3/31/1971	3/31/1972
TAXABLE INCOME AS SHOWN IN: [X] RETURN AS FILED [ ] PRELIMINARY LETTER DATED [ ] STATUTORY NOTICE DATED	865,870.00	774,115.00	1,498,711.00
INCREASES (DECREASES) IN INCOME *(See attached explanation of items)*			
(a) Depletion Expense	84,662.00	85,413.00	12,216.00
(b) Other Deductions - Customer Entertaining			2,734.00
TAXABLE INCOME AS REVISED	950,532.00	859,528.00	1,513,661.00
A. LESS: EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS *(Alternative tax computation)*			
B. INCOME SUBJECT TO TAX			
C. ~~ORIGINAL TAX~~	451,255.00	-0-	-0-
D. ~~TAX ON~~ AMOUNT SHOWN ON LINE A *(Alternative tax computation)* If Applicable See Schedule 2	-0-	406,122.00	720,488.00
E. TAX SURCHARGE	39,562.00	5,063.00	-0-
F. OTHER TAXES Investment Credit Recapture Per Return	308.00	-0-	-0-
G. SUBTOTAL *(Lines C, D, E and F)*	491,125.00	411,185.00	720,488.00
H. TAX CREDITS Investment Credit Per Return	4,547.00	531.00	5,044.00
I. INCOME TAX LIABILITY *(Line G less Line H)*	486,578.00	410,654.00	715,444.00
J. INCOME TAX LIABILITY SHOWN ON RETURN AND ADDITIONAL ASSESSMENT (OVERASSESSMENT) Document Locator No. 8731217100001	442,378.00		
Document Locator No. 8731211700015		369,145.00	
Document Locator No. 8731216900009			708,269.00
K. DEFICIENCY (OVERASSESSMENT)	44,200.00	41,509.00	7,175.00

TAX COMPUTATION

FORM 4549-D
(DECEMBER 1970)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INCOME TAX AUDIT CHANGES

COMPUTATION OF ALTERNATIVE TAX - CORPORATIONS

TAXPAYER'S NAME: Portland Cement Company of Utah

EMPLOYER IDENTIFICATION NUMBER: 87-0165650

		Year:	Year: 3/30/71	Year: 3/30/72
PART I *Complete for all years*	1. CORRECTED TAXABLE INCOME (Schedule 1)		$ 859,528	$1,513,661
	2. NET LONG-TERM CAPITAL GAIN MINUS NET SHORT-TERM CAPITAL LOSS		7,438	5,938
	3. LINE 1 LESS LINE 2		852,090	1,507,723
	4. SURTAX EXEMPTION *(Line 3, $26,000, or amount apportioned under section 1561, whichever is lesser)*		25,000	25,000
	5. LINE 3 LESS LINE 4		827,090	1,482,723
	6. a. FOR YEARS ENDING BEFORE 1/1/70 - 25% OF LINE 2 b. FOR YEARS ENDING AFTER 12/31/69 - AMOUNTS FROM LINE 16		2,119	1,781
		Year: Year: 3/30/71 Year: 3/30/72		
	7. % 22 % 22 % OF LINE 3		187,460	331,699
	8. % 26 % 26 % OF LINE 5		215,043	385,508
	9. IF MULTIPLE SURTAX EXEMPTION ELECTED UNDER SECTION 1562, ENTER 6% OF LINE 4		1,500	1,500
	10. ALTERNATIVE TAX *(Add lines 6 through 9)*		406,122	720,488
PART II *Complete for all years ending after 12/31/69*	11. NET LONG-TERM CAPITAL GAIN REDUCED BY ANY NET SHORT TERM CAPITAL LOSS		7,438	5,938
	12. LONG-TERM CAPITAL GAIN *(section 1201 (d) IRC)**		-0-	-0-
	13. LINE 11 LESS LINE 12 *(if less than zero, enter zero)*		7,438	5,938
	14. 25% OF THE LESSER OF LINE 11 OR LINE 12		-0-	-0-
	15. a. FOR CALENDAR YEAR 1970 - 28% OF LINE 13 b. FOR CALENDAR YEARS 1971 THROUGH 1974 AND FISCAL YEARS ENDING IN 1972 THROUGH 1974 - 30% OF LINE 13 c. FOR FISCAL YEARS ENDING 1970 AND 1971 - AMOUNTS FROM LINES 19 & 22		2,119	1,781
	16. ADD LINES 14 AND 15 *(enter on line 6, above)*		2,119	1,781
PART III *Complete only for fiscal year ending in 1970*	17. AMOUNT ON LINE 13 x (NO. DAYS BEFORE 1/1/70 / 365) x 25%			
	18. AMOUNT ON LINE 13 x (NO. DAYS AFTER 12/31/69 / 365) x 28%			
	19. ADD LINES 17 AND 18 *(enter on line 15c, above)*			
PART IV *Complete only for a fiscal year ending in 1971*	20. AMOUNT ON LINE 13 x (NO. DAYS BEFORE 1/1/71 / 365) x 28%		1,569	
	21. AMOUNT ON LINE 13 x (NO. DAYS AFTER 12/31/70 / 365) x 30%		550	
	22. ADD LINES 20 AND 21 *(enter on line 15c, above)*		2,119	

*Long term capital gains from certain binding contracts, distributions, and installment sales

FORM 4549-D (12-70)

FORM 886-A (REV. APRIL 1968) | EXPLANATION OF ITEMS | SCHEDULE NO. 1-A

NAME OF TAXPAYER: Portland Cement Company of Utah | YEAR/PERIOD ENDED 3/31/1970 3/31/1971 & 3/31/1972

(a) It is held that since the taxable income from the property (computed without allowance for depletion deduction) derived from your limestone mine (quarry) was $271,739.00 for the taxable year ended March 31, 1970, and $220,957.00 for the taxable year ended March 31, 1971, as computed in Exhibit A attached hereto, your deduction for depletion under section 613 of the Internal Revenue Code of 1954 is $135,870.00 for the taxable year ended March 31, 1970, and $110,479.00 for the taxable year ended March 31, 1971.

It is held that since the gross income from mining derived from your limestone mine (quarry) was $1,251,312.00 for the taxable year ended March 31, 1972, as computed in Exhibit A attached hereto, your deduction for depletion under section 613 of the Internal Revenue Code of 1954 is $175,184.00.

Therefore, taxable income is increased as follows:

Taxable Year Ended	3/31/1970	3/31/1971	3/31/1972
Depletion on Cement Rock Claimed on your Return	$220,532.00	$195,892.00	$187,400.00
Depletion Allowable - As Computed in Exhibit A	135,870.00	110,479.00	175,184.00
Increase in Taxable Income	$ 84,662.00	$ 85,413.00	$ 12,216.00

(b) The deduction of $11,472.00 claimed for Other Deductions - Customer Entertaining is not allowed to the extent of $2,734.00 because it has not been established that any amount in excess of $8,738.00 represents an ordinary and necessary business expense or was expended for the purpose designated.

Therefore, taxable income is increased in the amount of $2,734.00.

Portland Cement Company of Utah [page 1]

EXHIBIT A

DEPLETION COMPUTATION

Computation to eliminate shipping, storing, bagging, and selling (distributive expenses) from actual sales receipts to arrive at constructive income from bulk cement produced from taxpayer's quarry rock at the silo.

Taxable Year Ended		3/31/1970
Gross Receipts from Sales as Adjusted (See Page 2, Note 1)		$3,817,390
Less: Receipts from Purchased Cement	$ 37,938	
Cash Discounts	164,623	202,561
Actual Receipts from Manufactured Cement		$3,614,829
Less: Receipts from Shipping, Bagging, Selling (Distributive Activities) (See Page 2, Note 2)		444,332
Receipts Attributable to Bulk Cement after Mfg.		$3,170,497
Less: Receipts from Purchased Additives (Page 2, Note 3)		328,174
Receipts (Sales) Allocable Between Mining, and Non-mining Processes after Elimination of Distribution Expenses and Purchased Additives - (Receipts Attributable to Bulk Cement)		$2,842,323

COMPUTATION OF GROSS INCOME FROM MINING

$$\text{Gross Income} = \frac{\text{Mining Cost (Page 2)}}{\text{Total Cost of Bulk Cement (Page 3)}} \times \text{Receipts Attributable to Bulk Cement (Page 1)}$$

$$\text{Gross Income} = \frac{707728}{2054730} \times 2842323$$

$$\text{Gross Income} = 34.45\% \times 2842323$$

$$\text{Gross Income} = \$979,180$$

Portland Cement Company of Utah [page 2]

EXHIBIT A

PERCENTAGE DEPLETION - PROPORTIONATE PROFITS COMPUTATION

Taxable Year Ended		3/31/1970
1. Gross Income from Mining (Page 1)		$ 979,180
2. Less: Mining Costs (Page 3)	***	707,441
3. Taxable Income from Property		271,739
4. 50% of Line 3		135,870
5. 15% of Gross Income from Mining		146,877
6. Allowable Depletion		135,870

*** Mining Costs (Page 3)	$ 707,728	
Less: Contributions Included in Indirect Costs (27.08% of 1058)	(287)	
Total Mining Costs	$ 707,441	

(Note 1) Gross Receipts Net of Empty Bags		$3,799,356
Add: Bag Costs (Credit to Bag Inv. Account)		18,034
Gross Receipts from Sales as Adjusted		$3,817,390
Note 2) Computation of Receipts Attributable to Shipping, Bagging, Selling (Distributive) Activities		
Direct Storage and Shipping Expenses		$ 182,108
Selling Expense		82,447
Bag Costs (Credits to Bag Inventory Account)		18,034
		$ 282,589
Allocated Indirect Costs (Page 3)		38,622
Total Direct and Indirect Costs (Page 3)		321,211
Profit Allocated to Shipping, Selling, etc., on Cost -(Page 4)		123,121
Receipts Attributable to Shipping, Selling, etc.		$ 444,332
Note 3) Computation of Receipts Attributable to Purchased Additives		
Direct Cost of Purchased Additives		$ 129,359
Direct Cost of Processing Additives		79,347
Allocated Indirect Costs - (Page 3)		28,534
Total Direct and Indirect Cost of Additives (Page 3)		$ 237,240
Profit Allocated to Purchased Additives (Page 4)		90,934
Receipts Attributable to Purchased Additives		$ 328,174

Portland Cement Company of Utah [page 3]

EXHIBIT A

ALLOCATION OF INDIRECT COSTS IN PROPORTION TO DIRECT COSTS

Fiscal Year 3/31/1970

		Direct Costs	%	Indirect Costs	Total Cost
(1)	Mining	$ 622,627	27.08	$ 85,100	$ 707,728
(2)	Non Mining	$1,185,004	51.55	$161,999	$1,347,002
(3)	Shipping, Storing, Etc.	$ 282,589	12.29	$ 38,622	$ 321,210
(4)	Additives	$ 208,705	9.08	$ 28,534	$ 237,240
	Totals	$2,298,925	100.00	$314,255	$2,613,180

(1) Mining Costs:

Quarry	$ 221,605
Hauling Quarry Rock	96,496
Raw Grinding and Blending ($513,231 - $129,359 x 79.33%) (a) (b)	304,526

(b) Raw Materials Purchased / Total Raw Materials Used

Total Direct	$ 622,627

(2) Non-Mining Costs:

Burning and Cooling	$ 917,352
Finish Grinding	267,652
Total	$1,185,004

(3) Shipping, Storing, Bagging & Selling Costs:

Storing and Shipping	$ 182,108
Selling	82,447
Bag Costs (Credits to Bag Inventory Acct.)	18,034
Total	$ 282,589

(4) Additives:

Cost of Purchased Lime, Silica & Slag	$ 129,359	(a)
Cost of Processing Additives $513,231 - $129,359 x 20.67% (2)	79,346	
Direct Costs Attributable to Additives	$ 208,705	

Portland Cement Company of Utah [page 4]

EXHIBIT A

COMPUTATION OF PROFIT ON COST

Fiscal Year 3/31/1970

Actual Receipts from Manufactured Cement (Page 1)	$3,614,829
Total Cost of Manufactured Cement (Page 3)	2,613,181
Total Profit on Manufactured Cement Sales	$1,001,648

$$\frac{\text{Profit}}{\text{Cost}} \quad \frac{1,001,648}{2,613,181} = 38.33\%$$

Profit Attributable to Storing & Shipping, Bagging & Selling Expenses

321,211 x 38.33% = $123,121

Profit Attributable to Purchased Additives

237,240 x 38.33% = $90,934

Portland Cement Company of Utah [page 5]

EXHIBIT A

SCHEDULE OF INDIRECT COSTS

Fiscal Year 3/31/1970

General and Administrative Expenses Per CPA Report		$160,984
Interest Expense	$95,356	
Less: Interest not Attributable to Cement Operations	22,508	72,848
Inventory Adjustment		12,814
Utah Franchise Tax		17,299
Loss on Scrapped Fixed Assets		46,079
Loss - Sale of Scrap		(863)
Amortization of Loan Costs		3,094
Total		$314,255

Portland Cement Company of Utah [page 6]

EXHIBIT A

DEPLETION COMPUTATION

Computation to eliminate shipping, storing, bagging and selling (distributive expenses) from actual sales receipts to arrive at constructive income from bulk cement produced from taxpayer's quarry rock at the silo.

Taxable Year Ended		3/31/1971
Gross Receipts from Sales as Adjusted (See Page 7, Note 1)		$3,610,112
Less: Receipts from Purchased Cement	$ 46,114	
Cash Discounts	150,987	197,101
Actual Receipts from Manufactured Cement		$3,413,011
Less: Receipts from Shipping, Bagging, Selling (Distributive Activities) (See Page 8, Note 2)		447,626
Receipts Attributable to Bulk Cement After Mfg.		$2,965,385
Less: Receipts from Purchased Additives (See Page 8, Note 3)		357,721
Receipts (Sales) Allocable Between Mining and Non-mining Processes after Elimination of Distribution Expenses (Receipts Attributable to Bulk Cement)		$2,607,664

COMPUTATION OF GROSS INCOME FROM MINING

Gross Income = $\frac{\text{Mining Cost}}{\text{Total Cost of Bulk Cement}}$ X Receipts Attributable to Bulk Cement (Page 6)

Gross Income = $\frac{\$\ 656,683}{1,951,459}$ X $2,607,664

Gross Income = 33.65% X $2,607,664

Gross Income = $ 877,479

Portland Cement Company of Utah [Page 7]

EXHIBIT A

PERCENTAGE DEPLETION - PROPORTIONATE PROFITS COMPUTATION

Fiscal Year 3/31/1971

1.	Gross Income from Mining (Page 6)			$ 877,479
2.	Less: Mining Costs		***	656,522
3.	Taxable Income from Property			220,957
4.	50% of line 3			110,479
5.	14% of Gross Income from Mining			122,847
6.	Allowable Depletion			110,479

***	Mining Costs (Page 8)	$656,683	
	Less: Contributions Included in Indirect Costs (25.71% of 625)	(161)	
	Total Mining Costs	$656,522	

(Note 1)	Gross Receipts Net of Empty Bags		$3,591,699
	Add: Bag Costs (Credit to Bag Inv. Acct.)		18,413
	Gross Receipts as Adjusted		$3,610,112
(Note 2)	Computation of Receipts Attributable to Shipping, Bagging, Selling (Distributive) Activities		
	Direct Storing & Shipping Expense		$ 217,970
	Direct Selling Expense		67,379
	Bag Costs (Credits to Bag Inventory Account)		18,412
			$ 303,761
	Allocated Indirect Costs (Page 8)		31,237
	Total Direct & Indirect Costs (Page 8)		$ 334,998
	Profit Allocated to Shipping, Selling, Etc., on Cost (Page 9)		112,628
	Receipts Attributable to Shipping, Selling, Etc.		$ 447,626
(Note 3)	Computation of Receipts Attributable to Purchased Additives		
	Direct Cost of Purchased Additives		$ 134,905
	Direct Cost of Processing Additives		107,858
	Allocated Indirect Costs (Page 8)		24,952
	Total Direct & Indirect Costs (Page 8)		$ 267,715
	Profit Allocated to Purchased Additives (Page 9)		90,006
	Receipts Attributable to Purchased Additives		$ 357,721

Portland Cement Company of Utah [page 8]

EXHIBIT A

ALLOCATION OF INDIRECT COSTS IN PROPORTION TO DIRECT COSTS

Fiscal Year 3/31/1971

		Direct Costs	%	Indirect Costs	Total Cost
(1)	Mining	$ 595,470	25.71	$ 61,213	$ 656,683
(2)	Non-mining	1,174,089	50.69	120,687	1,294,776
(3)	Shipping, Storing, etc.	303,761	13.12	31,237	334,998
(4)	Additives	242,763	10.48	24,952	267,715
		$2,316,083	100.00	$238,089	$2,554,172

(1)	Mining Costs			
	Quarry		$ 225,753	
	Hauling Quarry Rock		88,758	
	Raw Grinding and Blending			
	($523,722 - $134,905 x 72.26%)		280,959	
	(a) (b)			
	(b) Raw Materials Purchased			
	Total Raw Materials Used			
	Total Direct		$ 595,470	
(2)	Non-mining Costs			
	Burning and Cooling		$ 852,550	
	Finish Grinding		321,539	
	Total		$1,174,089	
(3)	Storing, Shipping, Bagging & Selling Costs			
	Storing and Shipping		$ 217,971	
	Selling		67,378	
	Bag Costs		18,412	
	Total		$ 303,761	
(4)	Additives			
	Cost of Purchased Lime, Silica & Slag		$ 134,905	(a)
	Cost of Processing Additives			
	($523,722 - $134,905 x 27.74%)		107,858	
	Direct Costs Attributable to Additives		$ 242,763	

Portland Cement Company of Utah [page 9]

EXHIBIT A

COMPUTATION OF PROFIT ON COST

Fiscal Year 3/31/1971

Actual Receipts from Manufactured Cement (Page 6)	$3,413,010
Total Cost of Manufactured Cement (Page 8)	2,554,172
Total Profit on Manufactured Cement Sales	$ 858,838

$$\frac{\text{Profit}}{\text{Cost}} \quad \frac{858,838}{2,554,172} = 33.62\%$$

Profit Attributable to Storing, Shipping, Bagging & Selling Expenses

334,999 x 33.62% = $112,628

Profit on Purchased Additives

267,715 x 33.62% = $ 90,006

Portland Cement Company of Utah [page 10]

EXHIBIT A

SCHEDULE OF INDIRECT COSTS

Fiscal Year 3/31/1971

General and Administrative Expenses Per CPA Report		$115,056
Interest Expense	$87,106	
Less: Interest not Attributable to Cement Operations	22,508	64,598
Inventory Adjustment		5,794
Total		$185,447
Utah Franchise Tax		33,419
Loss on Fixed Assets Scrapped		18,520
Amortization of Loan Costs		3,094
Less: Sale of Scrap		(2,392)
Total		$238,089

Portland Cement Company of Utah [page 11]

EXHIBIT A

DEPLETION COMPUTATION

Computation to eliminate shipping, storing, bagging and selling (distributive expenses) from actual sales receipts to arrive at constructive income from bulk cement produced from taxpayer's quarry rock at the silo.

Taxable Year Ended		3/31/1972
Gross Receipts from Sales as Adjusted (See Page 12, Note 1)		$4,911,925
Less: Receipts from Purchased Cement	$ 44,687	
Cash Discounts	191,779	236,466
Actual Receipts from Manufactured Cement		$4,675,459
Less: Receipts from Shipping, Bagging, Selling (Distributive Activities) (See Page 12, Note 2)		561,298
Receipts Attributable to Bulk Cement after Mfg.		$4,114,161
Less: Receipts from Purchased Additives (See Page 12, Note 3)		325,750
Receipts Allocable Between Mining and Non-mining Processes after Elimination of Distributions Expenses & Purchased Additives (Receipts Attributable to Bulk Cement)		$3,788,411

COMPUTATION OF GROSS INCOME FROM MINING

$$\text{Gross Income} = \frac{\text{Mining Cost}}{\text{Total Cost of Bulk Cement}} \times \text{Receipts Attributable to Bulk Cement}$$

$$\frac{828,214}{2,567,152} = 33.03\% \times \$3,788,411 = \$1,251,312$$

Portland Cement Company of Utah [page 12]

EXHIBIT A

PERCENTAGE DEPLETION - PROPORTIONATE PROFITS COMPUTATION

Taxable Year Ended			3/31/1972
1. Gross Income from Mining (Page 11)			$1,251,312
2. Less: Mining Costs (Page 13)		***	827,764
3. Taxable Income from Property			423,548
4. 50% of Line 3			211,774
5. 14% of Gross Income from Mining			175,184
6. Allowable Depletion			175,184

*** Mining Costs	$828,214	
Less: Contributions Included in Direct Costs (26.77% of 1,680)	450	
Total Mining Costs	$827,764	

(1) Gross Receipts Net of Empty Bags		$4,891,898
Add: Bag Costs (Credits to Bag Inventory)		20,027
Gross Receipts from Sales as Adjusted		$4,911,925
(2) Computation of Receipts Attributable to Shipping, Bagging & Selling		
Direct Storage and Shipping Expense		$ 228,748
Direct Selling Expenses		72,190
Bag Costs (Credits to Bag Inventory)		20,027
		$ 320,961
Allocated Indirect Costs (Page 13)		50,488
Total Direct and Indirect Costs (Page 13)		$ 371,449
Profit Allocated to Shipping, Selling, etc. (Page 14)		189,849
Receipts Attributable to Shipping, Selling, etc.		$ 561,298
(3) Computation of Receipts Attributable to Purchased Additives		
Direct Cost of Purchased Additives		$ 112,010
Direct Cost of Processing Additives		74,236
Allocated Indirect Costs (Page 13)		29,325
Total Direct & Indirect Cost of Additives (Page 13)		215,571
Profit Allocated to Purchased Additives (Page 14)		110,179
Receipts Attributable to Purchased Additives		$ 325,750

Portland Cement Company of Utah [Page 13]

EXHIBIT A

ALLOCATION OF INDIRECT COSTS IN PROPORTION TO DIRECT COSTS

Fiscal Year 3/31/1972

		Direct Costs	%	Indirect Costs	Total Cost
(1)	Mining	$ 715,583	26.77	$112,631	$ 828,214
(2)	Non-mining	1,450,648	54.26	228,291	1,678,939
(3)	Shipping, Storing, etc.	320,961	12.00	50,488	371,449
(4)	Additives	186,246	6.97	29,325	215,571
	Totals	$2,673,438	100.00	$420,735	$3,094,173

(1) Mining Costs

Quarry	$ 267,041	
Hauling Quarry Rock	120,196	
Raw Grinding and Blending		
(514,593 - 112,010 x 81.56%)	328,346	
1 2		
2. Raw Material Purchased		
Total Raw Material Used		
Total Direct	$ 715,583	

(2) Non-mining Costs

Burning and Cooling	$1,125,824	
Finish Grinding	324,824	
Total	$1,450,648	

(3) Storing and Shipping, Bagging & Selling Costs

Storing and Shipping	$ 228,744	
Selling	72,190	
Bag Costs (Credits to Bag Inventory)	20,027	
Total	$ 320,961	

(4) Additives

Cost of Purchased Lime, Silica & Slag	$ 112,010	1
Cost of Processing Additives		
(514,592 - 112,010 x 18.44%)	74,236	
Direct Cost Attributable to Additives	$ 186,246	

Portland Cement Company of Utah [Page 14]

EXHIBIT A

COMPUTATION OF PROFIT ON COST

Fiscal Year 3/31/1972

Actual Receipts from Manufactured Cement (Page 11)	$4,675,459
Total Cost of Manufactured Cement (Page 13)	3,094,173
Total Profit on Manufactured Cement Sales	$1,581,286

$$\frac{\text{Profit}}{\text{Cost}} \quad \frac{1,581,286}{3,094,174} = 51.11\%$$

Profit Attributable to Storing, Shipping, Bagging & Selling Expenses

371,449 x 51.11% = $189,849

Profit Attributable to Purchased Additives

215,571 x 51.11% = $110,179

Portland Cement Company of Utah

[page 15]

EXHIBIT A

SCHEDULE OF INDIRECT COSTS

Fiscal Year 3/31/1972

General and Administrative Expenses		$135,031
Interest Expense	$ 78,856	
Less: Interest not Attributable to Cement Operations	22,508	56,348
Amortization of Loan Costs		3,094
Loss on Fixed Assets Scrapped		26,378
Less: Sale of Scrap		(2,063)
Inventory Adjustment		35,142
Utah Franchise Tax		33,433
Interest Paid on Federal Income Tax Deficiencies	$144,427	
Less: Interest Received on Federal Tax Refund	2,995	141,432
		$428,795
Less: Non-deductible Expenses Included in General & Administrative Expenses (Life Insurance Premiums)		(8,060)
		$420,735

UNITED STATES TAX COURT

Docket No. 6306–73

[Filed September 13, 1973]

PORTLAND CEMENT COMPANY OF UTAH, a corporation, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

I, II and III. Admits the allegations of paragraphs I, II and III of the petition.

IV (a) to (e), inclusive. Denies the allegations of subparagraphs (a) to (e), inclusive, of paragraph IV of the petition.

V. Denies the allegations of each subparagraph of paragraph V of the petition.

VI. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

/s/ _____

LAWRENCE B. GIBBS/DRB
Acting Chief Counsel
Internal Revenue Service

OF COUNSEL:

EMORY L. LANGDON,
Regional Counsel

S. CLAY FREED,
Attorney

Internal Revenue Service
125 South State Street, Room 3438
Salt Lake City, Utah 84111

UNITED STATES TAX COURT

Docket No. 6306-73

[Filed January 20, 1975]

PORTLAND CEMENT COMPANY OF UTAH, A Corporattion,)
Petitioner,)
)
v.)
)
COMMISSIONER OF INTERNAL REVENUE, Respondent.)

STIPULATION OF FACTS

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. During each of the years at issue, Portland Cement Company of Utah had its principal place of business at Salt Lake City, Utah.

2. Attached are copies of U.S. Corporation Income Tax Returns (Forms 1120) filed by the petitioner with the Western Service Center at Ogden, Utah:

Fiscal Year Ending	*Joint Exhibit No.*
March 31, 1970	A-1
March 31, 1971	B-2
March 31, 1972	C-3

3. Portland Cement Company of Utah (hereinafter referred to as "taxpayer") has been for many years and was, during the years in question, engaged in the quarrying of an argillaceous limestone rock and the processing of that rock into finished portland cement. This argillaceous limestone is known in the trade as "cement rock." Taxpayer's "cement rock" is referred to in *Internal Revenue*

Code of 1954, § 613(b)(7) as "calcium carbonates" or "limestone." Taxpayer's rock is not used for any purpose other than processing into cement.

4. Taxpayer's cement rock is mined from its own quarry located in Parley's Canyon, 12 miles east of its cement plant. Taxpayer's cement plant is located at Eighth South Street and Sixth West Street in Salt Lake City, Utah.

5. Taxpayer's operations conducted at its quarry in Parley's Canyon may be described briefly as follows: the cement rock is first blasted loose from the mountainous quarry. The blasted rock is ripped by a bulldozer and pushed over the edge of the working bench down to the quarry floor. If necessary, secondary blasting or a drop ball is used to reduce the size of large boulders. The loose rock is loaded into trucks and transported to a jaw crusher where it is further reduced in size. It is then conveyed to impactors that reduce the material to a final size less than 1 inch. The crushed material is stored temporarily at the quarry in bins prior to loading into trucks for transportation to the taxpayer's cement plant.

6. Taxpayer's operations conducted at its cement plant in Salt Lake City may be described briefly as follows: the material is unloaded from the trucks transporting it from the quarry site and is placed in open stockpiles. Crushed purchased iron slag, silica and high lime rock are also placed in open stockpiles. When necessary, certain amounts of crushed purchased iron slag, silica, and/or high lime rock are fed into rod-ball mills along with the crushed rock mined by the taxpayer; and all of the material is ground to a fineness so that 75% volume passes through a 200 mesh sieve. Water is added in the rod-ball mills for the purpose of grinding and blending and to form a slurry similar to fine mud. The slurry is placed in tanks where it is continually agitated to keep the solids from settling, in order to maintain the proper blend of materials to produce a finished product which meets the specification for portland cement. The slurry is then fed into rotary kilns where it is burned. While in the kiln moisture is expelled and carbonates are converted to oxides while the material is

heated to a point of incipient fusion. Complex silicates and aluminates are formed by chemical reactions occurring in the kiln. A "clinker" results from the burning process. The clinker is cooled and later ground with purchased gypsum to produce finished cement.

7. The rock in taxpayer's quarry varies in chemical composition from one area to another. Any given area within the quarry does not always contain all the ingredients necessary to produce finished portland cement. When rock is quarried from such an area, it is necessary to add to taxpayer's cement rock other materials such as high lime rock, iron slag and/or silica. High lime rock is added to correct any calcium carbonate deficiency in taxpayer's quarry rock; iron slag is added to correct any iron deficiency in the quarry rock; and silica is added to compensate for any lack of silica oxides in the rock. If the required amounts of calcium carbonate, iron and silica oxides are not present in the slurry as it is introduced into the kiln, chemical actions required to produce a clinker from which portland cement can be made will not occur. It is only when the proper proportions of materials are introduced into the rod-ball mill that the necessary chemical reactions will take place during the burning in the kiln. In fact, chemical analyses are made by taxpayer's chemists to ensure that the slurry is of a proper composition for making portland cement.

8. The following shows facts concerning high lime rock purchased from others and used by taxpayer during the fiscal year in the making of cement:

Year	*Dollar Amount Purchased*	*Tons Purchased*
FY ending 3/31/70	$ 95,918.12	34,997
FY ending 3/31/71	$105,085.53	45,391
FY ending 3/31/72	$ 84,085.55	35,789
Totals	$285,089.20	116,177

9. The following shows facts concerning iron slag purchased from others and used by taxpayer during the fiscal year in the making of cement:

Year	*Dollar Amount Purchased*	*Tons Purchased*
FY ending 3/31/70	$ 4,397.45	2,728
FY ending 3/31/71	$ 3,038.76	1,820
FY ending 3/31/72	$ 4,171.26	2,498
Totals	$11,607.47	7,046

10. The following shows facts concerning silica purchased from others and used by taxpayer during the fiscal year in the making of cement:

Year	*Dollar Amount Purchased*	*Tons Purchased*
FY ending 3/31/70	$29,043.15	13,567
FY ending 3/31/71	$26,780.62	14,740
FY ending 3/31/72	$23,752.99	15,347
Totals	$79,576.76	43,654

11. During each of the years shown below, taxpayer quarried and used the following tonnages of cement rock in the making of portland cement:

Fiscal Year Ending	*Tons of Cement Rock*
March 31, 1970	196,903
March 31, 1971	161,379
March 31, 1972	237,211

12. During each of the years shown, taxpayer incurred the following quarry costs, which are considered mining costs in the application of the proportionate profits formula:

Fiscal Year Ending	*Amount*
March 31, 1970	$221,604.56
March 31, 1971	$225,752.56
March 31, 1972	$267,040.52

13. During each of the years shown, taxpayer incurred the following costs for hauling quarry rock, which are considered mining costs in the application of the proportionate profits formula:

Fiscal Year Ending	*Amount*
March 31, 1970	$ 96,496.40
March 31, 1971	$ 88,758.45
March 31, 1972	$120,195.90

14. During each of the years shown, taxpayer incurred the following costs for raw grinding and blending of materials used by it in the production of finished cement. The costs shown were incurred to grind and blend simultaneously both materials mined by the taxpayer and, when used, high lime rock, slag and silica purchased by the taxpayer from others. Raw grinding and blending is a process applied prior to the introduction of the kiln feed into the kiln:

Fiscal Year Ending	*Amount*
March 31, 1970	$383,872.61
March 31, 1971	$388,817.42
March 31, 1972	$402,582.94

15. During each of the years shown, taxpayer incurred the following costs for burning and cooling of materials used by it in the production of finished cement. The costs shown were incurred to burn the ground and blended materials referred to in paragraph 14 and cool the clinker resulting from such burning. Burning and cooling are processes applied subsequent to the introduction of the kiln feed into the kiln.

Fiscal Year Ending	*Amount*
March 31, 1970	$ 917,352.00
March 31, 1971	$ 852,549.97
March 31, 1972	$1,125,823.86

16. During each of the years shown, taxpayer incurred the following costs to finish grind the clinker. Finish grinding is a process applied subsequent to the introduction of the kiln feed into the kiln:

Fiscal Year Ending	*Amount*
March 31, 1970	$267,651.96
March 31, 1971	$321,539.18
March 31, 1972	$324,823.65

17. During each of the years shown, taxpayer paid the following amounts as dues to the Portland Cement Association:

Fiscal Year Ending	*Amount*
March 31, 1970	$35,268.85
March 31, 1971	$20,032.84
March 31, 1972	$18,186.85

The parties agree as to these years such costs are to be apportioned to mining and nonmining based on the proportion that the direct costs of mining processes and the direct costs of nonmining processes bear to each other.

18. During each of the years shown, taxpayer's gross sales of bulk and bagged cement were reported on its tax returns as follows:

Fiscal Year Ending	*Amount*
March 31, 1970	$3,799,355.81
March 31, 1971	$3,591,698.61
March 31, 1972	$4,891,897.56

Under taxpayer's accounting procedure, these figures did not include the cost of bags used in selling bagged cement.

19. During each of the years shown, taxpayer incurred the following costs for bags used in selling bagged cement:

Fiscal Year Ending	*Amount*
March 31, 1970	$18,034.00
March 31, 1971	$18,413.00
March 31, 1972	$20,027.00

20. During each of the years shown, taxpayer allowed the following cash discounts on all sales of cement. The parties agree that the amounts shown are proper subtractions from gross sales in applying the proportionate profits formula:

Fiscal Year Ending	*Amount*
March 31, 1970	$164,622.74
March 31, 1971	$150,987.27
March 31, 1972	$191,778.89

21. During each of the years shown, taxpayer purchased cement from others and resold the purchased cement to its own customers at the following amounts after cash discounts. The parties agree that the amounts shown are proper subtractions from gross sales in applying the proportionate profits formula:

Fiscal Year Ending	*Amount*
March 31, 1970	$37,937.97
March 31, 1971	$46,113.57
March 31, 1972	$44,687.34

22. During each of the years shown, taxpayer incurred the following expenses attributable to storing, shipping and bagging finished cement:

Fiscal Year Ending	*Amount*
March 31, 1970	$182,108.16
March 31, 1971	$217,970.58
March 31, 1972	$228,744.12

23. During each of the years shown, taxpayer incurred the following indirect expenses:

Fiscal Year Ending	*Amount*
March 31, 1970	$314,255.59
March 31, 1971	$238,088.71
March 31, 1972	$420,735.30

Such expenses are not identifiable with a particular mining or nonmining activity or process. However, the expenses apply to the entire cement producing operation. The parties agree that such costs are to be apportioned to mining and to nonmining based on the proportion that the direct costs of mining processes and the direct costs of nonmining processes bear to each other.

24. During each of the years shown, taxpayer deducted the following amounts on its tax returns for charitable contributions:

Fiscal Year Ending	*Amount*
March 31, 1970	$1,058.00
March 31, 1971	$ 625.00
March 31, 1972	$1,680.00

The parties agree that these deductions are not treated as costs in application of the proportionate profits formula.

25. Attached are copies of Report on Examination of Financial Statements and Supplemental Data prepared for taxpayer, as follows:

Fiscal Year Ending	*Joint Exhibit No.*
March 31, 1971 and 1970	D-4
March 31, 1972 and 1971	E-5

26. During each of the years shown, taxpayer incurred the following selling expenses:

Type of Expense	*March 31 1970*	*March 31 1971*	*March 31 1972*
Salaries	$23,000.00	$24,700.00	$26,140.00
Advertising & Public Relations	$ 5,618.86	$ 6,408.85	$ 6,108.64
Travel & Entertainment	$ 8,826.07	$ 8,651.95	$11,471.58
Automobile Expense	$ 6,893.04	$ 5,024.49	$ 6,368.31
Profit-sharing Plan Contribution	$ 2,840.50	$ 2,559.90	$ 3,915.10
Totals	$47,178.47	$47,345.19	$54,003.63

27. That portion of its cement sold by the taxpayer in bags is the same material as the cement sold in bulk.

28. Respondent concedes that for the fiscal year ending March 31, 1972, taxpayer's correct deduction for travel and entertainment is $11,471.58.

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: /s/ _____
T. W. SOMMER
Assistant Regional Counsel
Room 3438, 125 South State
P.O. Box 11189
Salt Lake City, Utah 84111
(801) 524-5815

/s/ _____
GLEN E. FULLER
Counsel for Petitioner
15 East Fourth South
Salt Lake City, Utah 84111

JAN. 15, 1975

8731217100301

Form **1120** — Department of the Treasury, Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1969 or other taxable year beginning 12 1 70 April 1, 1969, ending March 31, 1970 (PLEASE TYPE OR PRINT)

1969

Check if a—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (see page 7 of instructions) 3240

Name: SC 87-0165650 FCR MAR 31 1970 DC87
Num: PORTLAND CEMENT COMPANY OF UTAH
FCX 1469
City: SALT LAKE CITY UT 84110

D Employer Identification No. 87-0165650
E County in which located: Salt Lake
F Enter total assets from line 14, column (D), Schedule L (See instruction R): $5,664,974.66

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1 Gross receipts or gross sales 3,799,355.81 Less: Returns and allowances 164,622.74		3,634,733.07
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		2,065,642.74
	3 Gross profit		1,569,090.33
	4 Dividends (Schedule C)		9,190.40
	5 Interest on obligations of the United States and U.S. instrumentalities		22,411.95
	6 Other interest		76,622.34
	7 Gross rents		
	8 Gross royalties		
	9 Net gains (losses)—(separate Schedule D)		875.79
	10 Other income (attach schedule) Schedule 2		5,566.06
	11 TOTAL income—Add lines 3 through 10		1,683,756.87
DEDUCTIONS	12 Compensation of officers (Schedule E)		32,536.00
	13 Salaries and wages (not deducted elsewhere)		98,837.79
	14 Repairs (do not include capital expenditures)		
	15 Bad debts (Schedule F if reserve method is used)		41,778.85
	16 Rents		30,000.00
	17 Taxes (attach schedule) Schedule 3		21,681.60
	18 Interest		95,356.25
	19 Contributions (not over 5% of line 28 adjusted per instructions—attach schedule) Schedule 4		1,058.00
	20 Casualty or theft losses (attach schedule)		
	21 Amortization (attach schedule) Schedule 5		3,094.20
	22 Depreciation (Schedule G)		11,845.67
	23 Depletion Schedules 7 and 8		220,631.19
	24 Advertising		5,618.86
	25 (a) Pension, profit-sharing, stock bonus, annuity plans (attach Form 2950) Excluding amounts included in schedule 1		9,600.20
	(b) Other employee benefit plans (see instructions) Schedule 13		1,924.53
	26 Other deductions (attach schedule) Schedule 9		236,112.01
	27 TOTAL deductions on lines 12 through 26		810,075.15
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		873,681.72
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule)		
	(b) Special deductions (Schedule I) 7,811.84		7,811.84
	30 Taxable income (line 28 less line 29)		865,869.88
TAX	31 TOTAL TAX (Schedule J)		442,377.64
	32 Credits: (a) Tax deposited—Form 7004 application for extension (attach copy)		
	(b) 1969 estimated tax payments (include 1968 overpayment allowed as a credit—do not include any "quick refund" of overpayment of 1969 estimated tax applied for on Form 4466) 497,646.93		
	(c) Credit from regulated investment companies (attach Form 2439)		
	(d) Credit for U.S. tax on nonhighway gas and lube oil (attach Form 4136)		497,646.93
	33 TAX DUE (line 31 less line 32). See instruction G for tax deposit system	→	(55,269.29)
	34 OVERPAYMENT (line 32 less line 31)	→	
	35 Enter amount of line 34 you want: Credited to 1970 estimated tax ▶ 55,269.29 Refunded ▶		

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, my declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

Date: [illegible] Signature of officer: [illegible] Title: A-1

[illegible], Walker Bank Bldg., Salt Lake City, Utah
Address

[Exhibit A-1]

Received — Internal Revenue Service Center — Ogden, Utah — MAR 1970 — NC. 57

Schedule J—TAX COMPUTATION (Fiscal year corporations, see page 6 of instructions)

1 Taxable income (line 30, page 1)		865,869.88
2 Surtax exemption (line 1, $25,000, or amount apportioned under section 1561, whichever is lesser)		25,000.00
3 Line 1 less line 2		840,869.88
4 (a) 22% of line 1	190,491.37	
(b) 76% of line 3	218,626.17	
(c) If multiple surtax exemption is elected under section 1562, enter 6% of line 2	1,500.00	410,617.54
5 (a) Income tax (line 4, or line 24 of separate Schedule D, whichever is lesser)	410,617.54	
(b) Tax Surcharge—10% of line 5(a) Fiscal year - 08767123	35,999.34	446,616.88
6 Foreign tax credit (attach Form 1118)		
7 Line 5 less line 6		446,616.88
8 Investment credit (attach Form 3468)		4,547.03
9 Line 7 less line 8		442,069.85
10 (a) Personal holding company tax (attach Schedule 1120 PH)		
(b) Tax Surcharge—10% of line 10(a)		
11 Tax from recomputing a prior year investment credit (attach Form 4255)		307.79
12 Total tax—Add lines 9, 10, and 11. Enter here and on line 31, page 1		442,377.64

Form 1120 (1969) **Schedule L—BALANCE SHEETS** Page 4

ASSETS	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
1 Cash		1,232,895.51		633,366.42
2 Trade notes and accounts receivable	154,152.76		165,413.21	
(a) Less allowance for bad debts	4,160.81	149,991.95	3,989.74	161,423.47
3 Inventories		253,179.73		250,552.88
4 Gov't obligations: (a) U.S. and instrumentalities				1,153,261.26
(b) State, subdivisions thereof, etc Schedule 11		26,280.03		91,735.60
5 Other current assets (attach schedule)				
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule) Quarry claims		41,728.56		41,728.56
9 Buildings and other fixed depreciable assets	6,334,907.60		6,345,126.14	
(a) Less accumulated depreciation	3,053,715.68	3,281,191.92	3,275,371.58	3,069,754.56
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)		1,661.00		10,286.00
12 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13 Other assets (attach schedule) Schedule 11		254,300.51		252,865.91
14 Total assets		5,241,229.21		5,664,974.66
LIABILITIES AND STOCKHOLDERS' EQUITY				
15 Accounts payable		83,977.91		134,994.05
16 Mtges., notes, bonds payable in less than 1 yr.		150,000.00		150,000.00
17 Other current liabilities (attach schedule) Schedule 11		58,938.39		95,189.28
18 Loans from stockholders				
19 Mtges., notes, bonds payable in 1 yr. or more		1,650,000.00		1,500,000.00
20 Other liabilities (attach schedule) Provision for additional income taxes		331,580.54		445,734.20
21 Capital stock: (a) Preferred stock				
(b) Common stock	379,900.00	379,900.00	379,900.00	379,900.00
22 Paid-in or capital surplus (attach reconciliation)		7,000.00		7,000.00
23 Retained earnings—Appropriated (attach sch.)				
24 Retained earnings—Unappropriated		2,613,832.37		2,974,257.13
25 Less cost of treasury stock		(34,000.00)		(22,100.00)
26 Total liabilities and stockholders' equity		5,241,229.21		5,664,974.66

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	540,940.76	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax	442,377.64	(a) Tax-exempt interest $	
3 Excess of capital losses over capital gains		Equity in net income of subsidiary	12,171.54
4 Taxable income not recorded on books this year (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		(a) Depreciation $	
(a) Depreciation $		(b) Depletion $ 220,631.19	
(b) Depletion $		Deferred fed. income tax 7,107.90	
Utah franchise tax	33,419.24	Utah franch. tax 17,298.95	245,038.04
Provision for prior years' add. tax	114,153.66	9 Total of lines 7 and 8	257,209.58
6 Total of lines 1 through 5	1,130,891.30	10 Income (line 28, page 1)—line 6 less 9	873,681.72

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year	2,613,832.37	5 Distributions: (a) Cash	180,516.00
2 Net income per books	540,940.76	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Other decreases (itemize)	
		7 Total of lines 5 and 6	180,516.00
4 Total of lines 1, 2, and 3	3,154,773.13	8 Balance at end of year (line 4 less 7)	2,974,257.13

☆ U.S. GOVERNMENT PRINTING OFFICE (1969—O-337-081

Schedule 1

PORTLAND CEMENT CO. OF UTAH 87-0165650

COST OF PROCESSING

for the year ended March 31, 1970

Quarry:		
Labor	$ 69,189.36	
Supplies and maintenance	29,420.64	
Power	8,556.48	
Insurance	2,376.72	
Depreciation	32,253.89	
Property taxes	10,005.37	
Employee benefits	11,378.02	
General manufacturing costs applied	35,271.71	
Laboratory costs applied	17,346.08	
Electrical department costs applied	1,012.92	
Shop costs applied	3,539.87	
Profit-sharing plan contribution	1,253.50	
		$ 221,604.56
Hauling quarry rock		96,496.40
Raw grinding and blending:		
Labor	27,661.83	
High lime rock	95,918.12	
Slag	4,397.45	
Silica	29,043.15	
Supplies and maintenance	32,805.99	
Depreciation	138,666.44	
Power	70,288.27	
Employee benefits	4,551.21	
General manufacturing costs applied	51,808.34	
Laboratory costs applied	34,692.15	
Electrical costs applied	6,583.98	
Shop costs applied	16,814.40	
		513,231.33
Burning and cooling:		
Labor	120,073.60	
Fuel	328,432.39	
Supplies and maintenance	101,519.05	
Depreciation	108,941.02	
Power	47,492.07	
Employee benefits	19,747.29	
General manufacturing costs applied	91,882.88	
Laboratory costs applied	26,019.11	
Electrical department costs applied	29,881.15	
Shop costs applied	43,363.44	
		917,352.00
Forward		1,748,684.29

Schedule 1

PORTLAND CEMENT CO. OF UTAH 87-0165650

COST OF PROCESSING, Continued

Forward		$1,748,684.29
Finish grinding:		
Labor	$ 30,895.46	
Gypsum	64,923.15	
Grinding aids	12,504.58	
Supplies and maintenance	7,225.51	
Depreciation	33,090.73	
Power	60,789.85	
Employee benefits	5,084.40	
General manufacturing costs applied	24,985.24	
Laboratory costs applied	8,673.04	
Electrical department costs applied	7,090.44	
Shop costs applied	12,389.56	
		267,651.96
Cost of processing		$2,016,336.25

Schedule 7

PORTLAND CEMENT CO. OF UTAH 87-0165650

COMPUTATION OF DEPLETION ALLOWANCE ON CEMENT ROCK

for the year ended March 31, 1970

Gross sales of cement	$3,799,355.81	
Less cash discounts	164,622.74	
Net sales of cement	3,634,733.07	
Less sales of purchased cement	37,937.97	
Net sales of manufactured cement	3,596,795.10	
Less premium for bagged cement	30,913.55	
		$3,565,881.55
Cost of mining processes:		
Quarring	221,604.56	
Hauling quarry rock	96,496.40	
Raw grinding and blending	513,231.33	
	831,332.29	
Total cost of processing (Schedule 1)	2,016,336.25	
Ratio of mining process costs to total processing costs		41.23 %
Gross income from mining		1,470,212.98
Cost of mining processes		831,332.29
Net income from mining		$ 638,880.69
Depletion allowance: 15% of gross income from mining		$ 220,531.95
Limitation: 50% of net income from mining		$ 319,440.35

Note: This depletion computation is in accordance with the decision of the 19th Circuit Court of Appeals in the Ideal Basic Industries case, August 15, 1968. All "properly allocable" costs have been allocated.

POSTMARK DATE

07312177005

Form **1120** JUN 15 1971

Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1970 or other taxable year beginning Apr. 1, 1970, ending Marc. 31, 19 71

(PLEASE TYPE OR PRINT)

1970

Check if a—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (See page 7 of instructions.) 3240

Name: SC 87-0165650 FOR MAR 31 1971 DOS7
PORTLAND CEMENT COMPANY OF UTAH
Number: BOX 1469
City: SALT LAKE CITY UT 84110

D Employer Identification No. 87-0165650
E County in which located Salt Lake
F Enter total assets from line 14, column (D), Schedule L (See instruction R) $ 5,977,931.23

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1 Gross receipts or gross sales 3,591,698.61 Less: Returns and allowances 150,987.27		3,440,711.34
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		2,059,351.42
	3 Gross profit		1,381,359.92
	4 Dividends (Schedule C)		30,190.40
	5 Interest on obligations of the United States and U.S. instrumentalities		61,433.03
	6 Other interest		55,576.40
	7 Gross rents		
	8 Gross royalties		
	9 Net gains (losses)—(separate Schedule D)		7,197.87
	10 Other income (attach schedule) Schedule 2		3,006.64
	11 TOTAL income—Add lines 3 through 10		1,538,764.26
DEDUCTIONS	12 Compensation of officers (Schedule E)		39,225.00
	13 Salaries and wages (not deducted elsewhere)		110,920.01
	14 Repairs (do not include capital expenditures)		
	15 Bad debts (Schedule F if reserve method is used)		2,347.18
	16 Rents		30,000.00
	17 Taxes (attach schedule) Schedule 3		36,430.14
	18 Interest		87,106.25
	19 Contributions (not over 5% of line 28 adjusted per instructions—attach schedule)		625.00
	20 Amortization (attach schedule)		3,094.20
	21 Depreciation (Schedule G)		17,290.30
	22 Depletion Schedules 7 and 8		195,962.29
	23 Advertising Excluding amounts included in Schedule 1		6,408.85
	24 Profit sharing, stock bonus, pension and annuity plans (see instructions)		9,179.10
	25 Other employee benefit plans (see instructions) Schedule 12		3,568.78
	26 Other deductions (attach schedule) Schedule 9		196,464.01
	27 TOTAL deductions on lines 12 through 26		738,621.11
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		800,143.15
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule)		
	(b) Special deductions (Schedule I)	26,027.67	26,027.67
	30 Taxable income (line 28 less line 29)		774,115.48
TAX	31 TOTAL TAX (Schedule J)		369,145.25
	32 Credits: (a) Tax paid (deposited) with Form 7004 application for extension (attach copy)		
	(b) Estimated tax—Overpayment from 1969 allowed as a credit 55,269.29		
	1970 estimated tax payments (deposits) 360,000.00		
	Less refund of 1970 estimated tax applied for on Form 4466 ( )	415,269.29	
	(c) Credit from regulated investment companies (attach Form 2439)		
	(d) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		415,269.29
	33 TAX DUE (line 31 less line 32). See instruction G for depositary method of payment →		
	34 OVERPAYMENT (line 32 less line 31) →		46,124.04
	35 Enter amount of line 34 you want: Credited to 1971 estimated tax ▶ 46,124.04 Refunded ▶		

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

June 14 1971 (Date) — (Signature of officer) — President (Title)

6-2-71 (Date) — Lybrand, Ross Bros. & Montgomery, Salt Lake City, Utah 84111 (Individual or firm signature of preparer) (Address)

B-2

[Exhibit B-2]

Schedule J—TAX COMPUTATION

1 Taxable income (line 30, page 1)		774,115.48
2 Surtax exemption—Enter line 1 or $25,000, whichever is lesser. (Component members of a controlled group see page 6 of instructions and enter your surtax exemption or line 1, whichever is lesser)		25,000.00
3 Line 1 less line 2		749,115.48
4 (a) 22% of line 1	170,305.41	
(b) 26% of line 3	194,770.02	
(c) If multiple surtax exemption is elected under section 1562, enter 6% of line 2	1,500.00	366,575.43
5 (a) Income tax (line 4, or alternative tax from separate Schedule D, whichever is lesser) Alt.	365,124.61	
(b) Tax Surcharge—2½% of line 5(a) (Fiscal and short year corporations, see page 6 of instr.)	4,551.55	369,676.16
6 Foreign tax credit (attach Form 1118)		
7 Line 5 less line 6		369,676.16
8 Investment credit (attach Form 3468)		530.91
9 Line 7 less line 8		369,145.25
10 (a) Personal holding company tax (attach Schedule 1120 PH)		
(b) Tax Surcharge—2½% of line 10(a) (Fiscal and short year corporations, see page 6 of instr.)		
11 Tax from recomputing a prior year investment credit (attach Form 4255)		
12 Minimum tax on tax preference items (See page 6 of instructions). Check here ☒ if Form 4626 is attached		
13 Total tax—Add lines 9 through 12. Enter here and on line 31, page 1		369,145.25

Form 1120 (1970) **Schedule L—BALANCE SHEETS** Page 4

ASSETS	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
1 Cash		633,366.42		1,429,782.63
2 Trade notes and accounts receivable	165,413.21		216,645.77	
(a) Less allowance for bad debts	3,989.74	161,423.47	7,039.50	209,606.27
3 Inventories		250,552.88		269,576.40
4 Gov't obligations: (a) U.S. and instrumentalities		1,153,261.26		389,843.75
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule) Sch. 11		91,735.60		78,780.45
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule) Quarry claims		41,728.56		41,728.56
9 Buildings and other fixed depreciable assets	6,345,126.14		6,415,895.58	
(a) Less accumulated depreciation	3,275,371.58	3,069,754.56	3,561,210.94	2,854,684.64
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)		10,286.00		10,286.00
12 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13 Other assets (attach schedule) Sch. 11		252,865.91		693,642.53
14 Total assets		5,664,974.66		5,977,931.23
LIABILITIES AND STOCKHOLDERS' EQUITY				
15 Accounts payable		134,994.05		220,283.52
16 Mtges., notes, bonds payable in less than 1 yr.		150,000.00		150,000.00
17 Other current liabilities (attach schedule) Sch. 11		95,189.28		97,082.26
18 Loans from stockholders				
19 Mtges., notes, bonds payable in 1 yr. or more		1,500,000.00		1,350,000.00
20 Other liabilities (attach schedule) Prov. for addl. income taxes		445,734.20		466,195.68
21 Capital stock: (a) Preferred stock				
(b) Common stock	379,900.00	379,900.00	379,900.00	379,900.00
22 Paid-in or capital surplus (attach reconciliation)		7,000.00		7,000.00
23 Retained earnings—Appropriated (attach sch.)				
24 Retained earnings—Unappropriated		2,974,257.13		3,307,469.77
25 Less cost of treasury stock		(22,100.00		( )
26 Total liabilities and stockholders' equity		5,664,974.66		5,977,931.23

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	591,124.64	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax	369,145.25	(a) Tax-exempt interest $	
3 Excess of capital losses over capital gains			
4 Taxable income not recorded on books this year (itemize)			
		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		(a) Depreciation $	
(a) Depreciation $		(b) Depletion $ 195,962.29	
(b) Depletion $		Def. fed. inc. tax 6.65	
		Utah franch. tax 33,419.24	
Schedule 14	69,261.44	9 Total of lines 7 and 8	229,388.18
6 Total of lines 1 through 5	1,029,531.33	10 Income (line 28, page 1)—line 6 less 9	800,143.15

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year	2,974,257.13	5 Distributions: (a) Cash	257,912.00
2 Net income per books	591,124.64	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Other decreases (itemize)	
		7 Total of lines 5 and 6	257,912.00
4 Total of lines 1, 2, and 3	3,565,381.77	8 Balance at end of year (line 4 less 7)	3,307,469.77

Schedule 1
87-0165650

PORTLAND CEMENT CO. OF UTAH

COST OF PROCESSING

for the fiscal year ended March 31, 1971

Quarry:		
Labor	$ 74,146.86	
Supplies and maintenance	25,911.74	
Development costs	6,950.00	
Power	8,922.41	
Insurance	2,569.31	
Depreciation	33,600.11	
Property taxes	11,192.33	
Employee benefits	13,496.88	
General manufacturing costs applied	-36,950.07	
Laboratory costs applied	9,512.37	
Electrical department costs applied	794.75	
Shop costs applied	1,380.23	
Profit-sharing plan contribution	325.50	
		$ 225,752.56
Hauling Quarry Rock		88,758.45
Raw Grinding and Blending:		
Labor	25,131.40	
High lime rock	105,085.53	
Slag	3,038.76	
Silica	26,780.62	
Supplies and maintenance	64,327.12	
Depreciation	123,176.04	
Power	66,062.26	
Employee benefits	4,574.26	
General manufacturing costs applied	46,090.88	
Laboratory costs applied	32,342.06	
Electrical department costs applied	15,079.88	
Shop costs applied	12,033.52	
		523,722.33
Burning and Cooling:		
Labor	124,075.66	
Fuel	314,906.58	
Supplies and maintenance	65,518.48	
Depreciation	103,509.29	
Power	44,636.66	
Employee benefits	22,577.62	
General manufacturing costs applied	91,939.33	
Laboratory costs applied	27,585.88	
Electrical department costs applied	18,060.19	
Shop costs applied	39,740.28	
		852,549.97

Schedule 1
Sheet 2

COST OF PROCESSING, Continued

Finish Grinding:		
Labor	$ 35,831.55	
Gypsum	66,469.31	
Grinding aid	15,402.69	
Supplies and maintenance	25,874.13	
Depreciation	28,638.73	
Power	57,134.91	
Employee benefits	6,516.90	
General manufacturing costs applied	26,032.00	
Laboratory costs applied	25,683.40	
Electrical department costs applied	11,391.42	
Shop costs applied	22,564.14	
		$ 321,539.18
Cost of Processing		$2,012,322.49

Federal
Schedule 7

PORTLAND CEMENT CO. OF UTAH

COMPUTATION OF DEPLETION ALLOWANCE ON CEMENT ROCK

for the fiscal year ended March 31, 1971

Gross sales of cement	$3,591,698.61	
Less cash discounts	150,987.27	
Net sales of cement	3,440,711.34	
Less sales of purchased cement	46,113.57	
Net sales of manufactured cement	3,394,597.77	
Less premium for bagged cement	35,906.78	
		$3,358,690.99
Cost of mining processes:		
Quarrying	225,752.56	
Hauling quarry rock	88,758.45	
Raw grinding and blending	523,722.33	
	838,233.34	
Total cost of processing (Schedule 1)	$2,012,327.49	
Ratio of mining process costs to total processing costs		41.66%
Gross income from mining		1,399,230.67
Cost of mining processes		838,233.34
Net income from mining		$ 560,997.33
Depletion allowance:		
14% of gross income from mining		$ 195,892.29
Limitation:		
50% of net income from mining		$ 280,498.67

Note: This depletion computation is in accordance with the decision of the Tenth Circuit Court of Appeals in the Ideal Basic Industries case, August 15, 1968. All "properly allocable" costs have been allocated.

SELECTED 876082 53 (56)

Form **1120** — Department of the Treasury, Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1971 or other taxable year beginning APR 1, 1971, ending Mar. 31, 19 72

(PLEASE TYPE OR PRINT)

1971

POSTMARK DATE

JUN 14 1972

Check if a—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (See page 7 of instructions.) 3240

Name: SC 87-0165650 FOR MAR 31,1972 087 M
PORTLAND CEMENT COMPANY OF UTAH
Number: BOX 1
City: SALT LAKE CITY UT 84110

D Employer Identification No. 87-0165650
E County in which located: Salt Lake
F Enter total assets from line 14, column (D), Schedule L. (See instructions for IR) $ 6,199,880.69

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction H.

GROSS INCOME	1 Gross receipts or gross sales 4,891,897.56 Less: Returns and allowances 191,778.89		1	4,700,118.67
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		2	2,431,229.49
	3 Gross profit		3	2,268,889.18
	4 Dividends (Schedule C)		4	21,190.40
	5 Interest on obligations of the United States and U.S. instrumentalities		5	27,850.77
	6 Other interest		6	92,583.59
	7 Gross rents		7	
	8 Gross royalties		8	
	9 (a) Net capital gains—(separate Schedule D) 5,912.01		9(a)	X 5,937.50
	(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)		9(b)	(25.49)
	10 Other income (see instructions—attach schedule)		10	3,113.18
	11 TOTAL income—Add lines 3 through 10		11	2,419,539.13
DEDUCTIONS	12 Compensation of officers (Schedule E)		12	40,200.00
	13 Salaries and wages (not deducted elsewhere)		13	120,892.76
	14 Repairs (see instructions)		14	
	15 Bad debts (Schedule F if reserve method is used)		15	1,599.21
	16 Rents		16	30,000.00
	17 Taxes (attach schedule) Schedule 3		17	36,629.41
	18 Interest		18	223,283.19
	19 Contributions (not over 5% of line 28 adjusted per instructions—attach schedule) Sch. 4		19	1,680.00
	20 Amortization (attach schedule) Schedule 5		20	3,094.20
	21 Depreciation (Schedule G)		21	17,422.27
	22 Depletion Schedules 7 and 8		22	187,539.90
	23 Advertising		23	6,108.64
	24 Pension, profit-sharing, etc. plans (see instructions) Excluding amts included in Sch. 1		24	13,864.06
	25 Employee benefit programs (see instructions) Schedule 12		25	4,614.93
	26 Other deductions (attach schedule) Schedule 9		26	214,837.92
	27 TOTAL deductions—Add lines 12 through 26		27	901,766.49
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		28	1,517,772.64
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule) 29(a)			
	(b) Special deductions (Schedule I) 29(b) 19,061.84			19,061.84
	30 Taxable income (line 28 less line 29)		30	1,498,710.80
TAX	31 TOTAL TAX (Schedule J)		31	709,268.68
	32 Credits: (a) Overpayment from 1970 allowed as a credit 46,124.04			
	(b) 1971 estimated tax payments 675,000.00			
	(c) Less refund of 1971 estimated tax applied for on Form 4466 ( ) 721,124.04			
	(d) Tax deposited with Form 7004 (attach copy)			
	(e) Tax deposited with Form 7005 (attach copy)			
	(f) Credit from regulated investment companies (attach Form 2439)			
	(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)			721,124.04
	33 TAX DUE (line 31 less line 32). See instruction G for depositary method of payment		33	
	34 OVERPAYMENT (line 32 less line 31)		34	12,855.36
	35 Enter amount of line 34 you want: Credited to 1972 estimated tax ▶ 12,855.36 Refunded ▶		35	

RECEIVED JUL 16 1972 Internal Revenue Service Ogden, Utah

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.

6-14-72 Date — Signature of officer — Secretary Title

6-7-72 Date — Lybrand, Ross Bros. & Montgomery, Salt Lake City, Utah 841 — Signature of individual or firm preparing the return — Address

C-3

Schedule J—TAX COMPUTATION

1 Taxable income (line 30, page 1)		1,498,710.80
2 Surtax exemption—Enter line 1 or $25,000, whichever is lesser. (Component members of a controlled group—see page 6 of instructions and enter your surtax exemption or line 1, whichever is lesser)		25,000.00
3 Line 1 less line 2		1,473,710.80
4 (a) 22% of line 1	329,716.38	
(b) 26% of line 3	383,164.81	
(c) If multiple surtax exemption is elected under section 1562, enter 6% of line 2	1,500.00	714,381.19
5 Income tax (line 4, or alternative tax from separate Schedule D, whichever is lesser)		713,312.44 Alt.
6 Foreign tax credit (attach Form 1118)		
7 Line 5 less line 6		713,312.44
8 Investment credit (attach Form 3468)		5,043.76
9 Line 7 less line 8		708,268.68
10 Personal holding company tax (attach Schedule 1120 PH)		
11 Tax from recomputing a prior year investment credit (attach Form 4255)		
12 Minimum tax on tax preference items (see page 6 of instructions). Check here ☒ if Form 4626 is attached		
13 Total tax—Add lines 9 through 12. Enter here and on line 31, page 1		708,268.68

Form 1120 (1971) **Schedule L—BALANCE SHEETS** Page 4

ASSETS	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
1 Cash		1,429,782.63		948,776.84
2 Trade notes and accounts receivable	216,645.77		334,674.46	
(a) Less allowance for bad debts	7,039.50	209,606.27	9,538.22	325,136.24
3 Inventories		269,576.40		251,413.00
4 Gov't obligations: (a) U.S. and instrumentalities		389,843.75		195,031.25
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule) Sch. 11		78,780.45		47,726.41
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule) Quarry claims		41,728.56		41,728.56
9 Buildings and other fixed depreciable assets	6,415,895.58		6,070,097.46	
(a) Less accumulated depreciation	3,561,210.94	2,854,684.64	3,430,802.21	2,639,295.25
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)		10,286.00		10,286.00
12 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13 Other assets (attach schedule)		693,642.53		1,740,487.14
14 Total assets		5,977,931.23		6,199,880.69
LIABILITIES AND STOCKHOLDERS' EQUITY				
15 Accounts payable		220,283.52		198,523.29
16 Mtges., notes, bonds payable in less than 1 yr.		150,000.00		150,000.00
17 Other current liabilities (attach schedule) Sch. 11		97,082.26		103,944.65
18 Loans from stockholders				
19 Mtges., notes, bonds payable in 1 yr. or more		1,350,000.00		1,200,000.00
20 Other liabilities (attach schedule) Add fed. income taxes		466,195.68		92,725.00
21 Capital stock: (a) Preferred stock				
(b) Common stock	379,900.00	379,900.00	379,900.00	379,900.00
22 Paid-in or capital surplus (attach reconciliation)		7,000.00		7,000.00
23 Retained earnings—Appropriated (attach sch.)				
24 Retained earnings—Unappropriated		3,307,469.77		4,067,787.75
25 Less cost of treasury stock		( )		( )
26 Total liabilities and stockholders' equity		5,977,931.23		6,199,880.69

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	1,018,649.98	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax	708,268.68	(a) Tax-exempt interest $	
3 Excess of capital losses over capital gains		Equity in subsidiary 2,115.78; Fed. inc. tax refund 3,259.46	5,375.24
4 Taxable income not recorded on books this year (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		(a) Depreciation $	
(a) Depreciation $		(b) Depletion $187,539.90	
(b) Depletion $		Sch. 14 178,008.72	365,548.62
Sch. 14 - $161,777.84	161,777.84	9 Total of lines 7 and 8	370,923.86
6 Total of lines 1 through 5	1,888,696.50	10 Income (line 28, page 1)—line 6 less 9	1,517,772.64

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year	3,307,469.77	5 Distributions: (a) Cash	258,332.00
2 Net income per books	1,018,649.98	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Other decreases (itemize)	
		7 Total of lines 5 and 6	258,332.00
4 Total of lines 1, 2, and 3	4,326,119.75	8 Balance at end of year (line 4 less 7)	4,067,787.75

Schedule 1
87-0165650

PORTLAND CEMENT CO. OF UTAH

COST OF PROCESSING

Fiscal year ended March 31, 1972

Quarry:		
Labor	$ 80,644.51	
Supplies and maintenance	57,434.48	
Power	9,036.32	
Insurance	5,865.09	
Depreication	27,725.91	
Property taxes	11,064.49	
Employee benefits	16,078.53	
General manufacturing costs applied	39,843.78	
Laboratory costs applied	13,886.87	
Electrical department costs applied	1,259.55	
Shop costs applied	2,634.95	
Profit sharing plan contribution	1,566.04	
		$ 267,040.52
Hauling quarry rock		120,195.90
Raw grinding and blending:		
Labor	30,717.20	
High lime rock	84,085.55	
Slag	4,171.26	
Silica	23,752.99	
Supplies and maintenance	61,647.48	
Depreciation	110,945.96	
Power	78,513.66	
Employee benefits	6,120.49	
General manufacturing costs applied	37,868.35	
Laboratory costs applied	40,592.40	
Electrical department costs applied	18,635.57	
Shop costs applied	17,541.83	
		514,592.74
Burning and cooling:		
Labor	151,9[illegible]	
Fuel	467,479.97	
Supplies and maintenance	127,917.23	
Depreciation	97,852.12	
Power	53,049.77	
Employee benefits	30,308.30	
General manufacturing costs applied	95,423.22	
Laboratory costs applied	20,296.20	
Electrical department costs applied	35,811.22	
Shop costs applied	45,728.44	
		1,125,823.86
Forward		2,027,653.02

Portland Cement Co. of Utah

Schedule 1
Sheet 2

Forward		$2,027,653.02
Finish grinding:		
Labor	$ 39,964.91	
Gypsum	84,194.53	
Grinding aid	2,264.21	
Supplies and maintenance	11,229.84	
Depreciation	27,557.26	
Power	67,903.70	
Employee benefits	7,969.23	
General manufacturing costs applied	25,603.83	
Laboratory costs applied	32,046.63	
Electrical department costs applied	8,988.59	
Shop costs applied	17,100.92	
		$ 324,823.65
Cost of processing		$2,352,476.67

Schedule 7
87-0165650

PORTLAND CEMENT CO. OF UTAH

PERCENTAGE DEPLETION ON CEMENT ROCK

Fiscal year ended March 31, 1972

Own quarry materials / Total raw materials = 81.56%			
Net sales of manufactured cement (Sheet 2)	4,655,431.33	x 81.56% =	$3,796,969.77
Eliminate from the computation:			
Storing and shipping expenses	228,744.12	x 81.56% =	186,563.70
Selling expenses	72,190.48	x 81.56% =	58,878.56
Adjusted gross receipts from sale of bulk cement			$3,551,527.51
Computation of gross income from mining:			
Quarry costs			$ 267,040.52
Hauling quarry rock			120,195.90
Grinding and blending (exclusive of purchase of raw materials)	402,582.94	x 81.56% =	328,346.65
Total pre-kiln costs (exclusive of purchased raw materials and costs of processing them)			715,583.07
Burning and cooling	1,125,823.86	x 81.56% =	918,221.89
Finish grinding	324,823.65	x 81.56% =	264,926.17
Total processing costs (exclusive of purchased raw materials and costs of processing them)			$1,898,731.13
715,583.07 divided by 1,898,731.13 = 37.69%			
Adjusted gross receipts			$3,551,527.51
Costs percentage			37.69%
Gross income from mining			1,338,570.71
Depletion rate			14%
Depletion allowance			$ 187,399.90
Computation of limitation:			
Gross income from mining			$1,338,570.71
Less total pre-kiln costs			(715,583.07)
Less indirect costs allocable to mining (Sheet 2)			(113,472.31)
Net income from mining			509,515.33
			50%
Limitation			$ 254,757.67

rtland Cement Co. of Utah

Schedule 7
Sheet 2

Computation of Net Sales of Manufactured Cement

Gross sales (no empty bag sales included)	$4,891,897.56
Less cash discounts	(191,778.89)
Less sales of purchased cement	(44,687.34)
Net sales of manufactured cement	$4,655,431.33

Allocation of General and Administrative Expenses and Interest to Mining

Quarry costs	$ 267,040.52
Hauling quarry rock	120,195.90
Grinding and blending (including cost of raw materials purchased)	514,592.74
Burning and cooling	1,125,823.86
Finish grinding	324,823.65
Storing and shipping expenses (no bad costs included)	228,744.12
Selling expenses	72,190.48
Total costs other than general and administrative and interest expenses	$2,653,411.27

Total pre-kiln costs (Sheet 1) 715,583.07 = 26.97%
Total costs other than general and administrative and interest 2,653,411.27

Indirect costs (general and administrative and interest expense)	$ 420,735.30
Percentage allocable to mining	26.97%
Allocable to mining	$ 113,472.31

[1] **UNITED STATES TAX COURT**

DOCKET NO. 6306-73

PORTLAND CEMENT COMPANY OF UTAH PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE RESPONDENT

TRANSCRIPT OF PROCEEDINGS
(January 20, 1975)

* * * * *

[2]

* * * * *

MR. FREED: Your Honor, we have a Stipulation of Facts. May I file that before opening statements?

THE COURT: Would you please?

THE CLERK: The last exhibit number is E-5.

THE COURT: Yes, the Stipulation of Facts and the exhibits attached are received in evidence.

MR. FULLER: If the Court please, with respect to one item on the exhibit, number 28, the last item—

THE COURT: Oh, well then—

[3] MR. FREED: He's just going to explain something, Your Honor. I accede to it. It's—

THE COURT: Well, I thought you said the exhibits ran from 1-A through E-5.

MR. FREED: Paragraph 28, I think he's referring to.

THE COURT: Oh. All right.

MR. FULLER: I'm referring to paragraph 28, the last paragraph of the exhibit.

THE COURT: All right. I thought you said exhibit. All right. You may proceed.

MR. FULLER: We'd like to make a correction to it and I understand it's satisfactory with counsel. The exhibit

referred to—actually it covers one of the contested issues of the matter that has been resolved. There was a $2,734.00 customer entertainment expense item and the government graciously conceded that item to us, and it is the intent of paragraph 28 to cover it.

THE COURT: I see.

MR. FULLER: In the deficiency notice and in our tax return, we have two other items that cover travel and entertainment, and this particular item that's embodied in the figure of $11,471.58 was really listed under customer entertainment, and we need that correction for the record. If that's satisfactory.

MR. FREED: Respondent agrees.

THE COURT: Then it's so stipulated, gentlemen.

* * * * *

[12]

* * * * *

MR. FULLER: The only other thing I'd like to do at this time, and I think it would help the Court, we have a little pamphlet that is put out by the Portland Cement Association called "The Making of Portland Cement". I've showed it to counsel and it would—I think it would be well to mark it as an exhibit and the Court could have it for reference.

THE COURT: You have no objection, I assume? As an exhibit—as petitioner's exhibit?

MR. FREED: No. I—that I have no objection. I believe the offer will be limited to indicate that the flow chart does not track entirely the petitioner's cement making process but substantially it's correct.

MR. FULLER: Yes, there are slight variations in our stipulation.

THE COURT: All right. It may be received in evidence.

THE CLERK: Exhibit 6 so marked.

* * * * *

[16]

* * * * *

THE CLERK: Petitioner's Exhibit 7 marked for identification.

MR. FULLER: If the Court please, this exhibit has been prepared and it has been shown to counsel for the respondent and he has a copy. I understand that he will present his case with his own exhibit as an aid and we would offer Exhibit 7 as representing the petitioner's computation in this case of its depletion allowance.

MR. FREED: I have no objection, Your Honor.

THE COURT: It'll be received as Petitioner's Exhibit.

THE CLERK: 7.

THE COURT: Thank you.

ASHBY SNOW DECKER,

called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. FULLER:

Q What is your occupation, Mr. Decker:

A I'm vice president and secretary of the Portland Cement Company of Utah.

Q And for how long have you held that position?

A I've held that position since approximately 1962.

[17] Q And have you been employed with the company at all times since 1962?

A Yes I have.

Q With respect to your qualifications in a professional capacity, could you tell the Court basically your schooling background.

A I have a Bachelor's Degree in accounting from the University of Utah. I'm a Certified Public Accountant in the state of Utah. Work background—I've served two

years in the U.S. Air Force as an accounting officer. I've worked with the public accounting firm of Lincoln G. Kelly & Co., and since 1959 I've been employed by the Portland Cement Company of Utah, first as Comptroller and then as vice president and secretary.

Q And in this position since 1959, have you at all times had control and possession of the books and records of the company?

A Yes, I have.

Q Mr. Decker, we have had marked Exhibit No. 7 and do you have a copy of that exhibit in your possession?

A Yes I do.

Q And just in a general way, what does Exhibit 7 show? What is its purpose?

A Exhibit 7 shows the computation of the percentage depletion allowance to which I feel Portland [18] Cement Company of Utah is entitled for the fiscal years ended March 31st 1970, '71 and '72.

Q So this exhibit is made of three sheets stapled together, is that correct?

A That is right.

Q Now is there any particular method or formula that you have followed or attempted to follow in making this computation?

A Yes. The method I followed in making this computation is using the proportionate profits method as set forth in the 10th Circuit Court of Appeals decision in U.S. vs. Ideal Basic Industries, just as literally as I can read it and follow it.

Q And what are the first steps under the proportionate profits formula that one must follow?

A Basically, you have to determine the percentage relationship between mining costs and total manufacturing cost. The processes as shown on this exhibit, which are included in the mining processes, are quarry operation—

Q Let's take 1970 as a typical year and follow it through just briefly for the Court.

A All right. In the fiscal year ending March 31st, 1970, we had total costs at our quarry $221,604.56, all of which is classed as mining cost.

Q All right.

[19] A The next item is the hauling cost. This is the cost of transporting the crushed one inch minus material from the quarry to the cement plant at a cost of $96,496.40. This also is classified as—entirely as mining cost. The next item is raw grinding and blending. The total cost there being $383,872.61. This represents the cost of unloading the raw materials from the quarry, handling them into feed bins, grinding them in the rod peb mill, pumping it into the slurry tanks and storing it there for introduction to the kiln. That cost I have split between mining and non-mining because at this stage of the process, we do add some purchased materials. And what I have done is to take the total raw materials used and relate that to the purchased materials used to arrive at a percentage, and that percentage being the tonnage of purchased materials used, I have multiplied times the total raw grinding and blending cost and shown that as non-mining cost. In other words, the cost of raw grinding and blending the purchased materials I'm showing as non-mining costs in this formula in this year being $79,346.47. The balance—

THE COURT: $79,000.00 is the—

THE WITNESS: Non-mining portion of the raw grinding and blending costs.

THE COURT: All right.

[20] MR. FULLER: And this would be the portion of the total cost in that department that you have allocated then to the purchased materials.

A This is correct. And the next item in the computation—

THE COURT: $79,000.00 some odd hundred.

THE WITNESS: Yes, sir.

THE COURT: Is the purchased materials?

THE WITNESS: That's the cost of grinding and blending the purchased materials.

THE COURT: All right.

THE WITNESS: The next item is the cost of the purchased materials themselves—

THE COURT: Oh.

THE WITNESS: $129,358.72. And that, of course, I've also classified as non-mining cost.

MR. FULLER: Did you, in arriving at the allocation you made, why did you not put the blending of and the grinding of the purchased materials in the mining category, along with the blending and mining of our own materials?

A Well, I felt that the tonnage was significant enough that it couldn't be termed incidental. In trying to follow literally the decision in Ideal Basic Industries, they included the cost there of grinding and blending [21] the purchased materials as part of mining costs because they ruled that they were incidental to the grinding and blending of the taxpayer's own materials. In our case, I felt that it was of sufficient tonnage that it probably could not be considered as incidental and therefore I excluded it from mining cost.

Q And by excluding it, did that favor us or hurt our percentage depletion?

A It reduces the percentage depletion.

Q All right. Then similarly, you took purchased additives and put those in the non-mining costs?

A That's correct.

Q All right. Take your next categories.

A Burning and cooling is the next manufacturing process. This involves introducing the slurry into the kiln, burning it to a clinker and, of course, cooling the clinker and disposing of the gasses and the fumes and the dust from the kiln. The total cost of that process in this year being $917,352.00, all of which I've classified as non-mining. And the final process in manufacturing Portland Cement is finish grinding, which involves adding four percent, approximately, gypsum to the clinker and grinding it in a ball mill into finished cement. The total cost of that

process in this year being $267,651.96, and all of that I have [22] classified as non-mining costs.

Q Now in segregating the mining and the non-mining costs to this point, how do these types of costs differ from general costs that we might have in cement making operations?

A Well, these are direct manufacturing costs incurred in these manufacturing processes.

Q Okay. Now, after sorting these direct costs into mining and non-mining categories, what did you next do?

A The next was to arrive at a percentage by taking the total mining cost and dividing that total by the total manufacturing cost, which results in a percentage in the particular year that we're looking at of 30.88 percent. This represents the relationship between mining costs and total manufacturing costs.

Q Now let me back up a little bit at this point. In arriving at these direct costs, at what stage in the total operations did you terminate the cost items that went into this percentage?

A At bulk cement.

Q At bulk cement.

A In other words, the total cost of manufacturing bulk cement is what's included in this computation.

Q And for the record, what is bulk cement and [23] where in the stage of activities do we arrive at bulk cement?

A Bulk cement is a very finely ground material, a very complex chemical composition. I couldn't give you a chemical formula for it. It occurs at the end of the finish grinding process after the clinker mixed with gypsum is ground to the required fineness, passes through some specialized equipment known as an air separater and is blown into storage silos for storage. At that point, you have bulk cement.

Q And is bulk cement saleable in that form?

A Yes it is.

Q And so that the Court will understand when bulk cement is sold, is it put in any kind of containers or just what is done with it when a customer takes it?

A It's loaded directly from storage silos into either bulk tanker trucks or bulk railroad cars.

Q All right. Now, does Portland Cement Company sell any of its cement in any form other than in this bulk type transfer?

A Yes. We sell some cement in paper bags.

Q And is this a process that comes before or after the bulk cement stage?

A It's after the bulk cement stage.

Q And what is done with the cement in the process [24] line to get it into the bags?

A It's simply taken from the storage silos, run into a bin above a bagging machine and it passes through the bagging machine and is placed in paper bags.

Q For the years involved, Mr. Decker, could you tell the Court the relative percentages of bag cement as compared with bulk cement that the company sells?

A Yes. In the fiscal year ended March 31st, 1970, seven percent of our cement was sold in bags. Fiscal year ended March 31st, 1971, eight percent was sold in bags and in the fiscal year ended March 31st, 1972, six point five percent was sold in bags.

Q Subsequent to the bulk cement stage of production, I take it there are other costs incurred in this total operation for the years involved.

A Yes.

Q Is that correct?

A Yes.

Q And does the company carry a category for storing, shipping and bagging costs?

A Yes. We just call it storing and shipping expense but included in that would be the costs of bagging.

Q And do you maintain records on the cost of bags?

A Yes.

Q And do you maintain selling expense records?

[25] A Yes we do.

Q Now to this point in your formula, in your computation and arriving at the percentage of 30.88 percent, did any of those costs that I have just now enumerated go into the direct costs?

A No. Those costs have all been excluded entirely from the computation.

Q And in this respect, have you attempted to follow the Ideal Basic decision?

A Yes. The decision specifically states that that should be done.

Q All right. Let's move down your formula for the subject year 1970 and I'm going to next ask you what did you do with and how did you handle these indirect costs of running the business and explain to the Court what they are.

A The indirect costs are composed of such things as our general and administrative costs, costs of operating our general office, all of the various general costs that are necessary in operating a business that cannot be assigned to any one specific department. We've also included in indirect costs the dues paid to the Portland Cement Association. All of these indirect costs have been allocated between mining and non-mining, based on the percentage, 30.88 percent, which we arrived at by [26] dividing mining costs by total manufacturing cost.

Q And I think I should mention at this point for the Court's benefit that we have stipulated in our facts the handling of the contributions and the P.C.A. Association dues, and we have followed that in this formula, correct?

A (Witness nods his head, yes)

Q All right, then. After you have made your total allocation of costs in Exhibit 7, we get to the item of gross sales and would you tell the Court how you arrived at gross sales and how you related this to the Ideal Basic decision.

A Well, the gross sales figure is simply the total revenue realized from the sale of cement. Then we deducted from that the cash discounts which were allowed to customers for prompt payment of their invoices. We've also deducted out the sales of purchase cement. We buy small quantities of white cement which we don't manufacture ourselves and stock that in bags as a convenience to some of our customers who use it and, of course, that was deducted from the sales figure to arrive at net sales of manufactured cement.

Q Now the figure you show on Exhibit 7 for this year is $3,596,795.10.

A That is correct.

[27] Q Have you attempted to relate that figure to the sales of cement at the bulk stage?

A Yes. This would represent the sales of bulk cement itself without including any purchase cement, any containers or any of the cash discounts which were allowed.

Q Did you make some further deductions from those net sales?

A Yes. Then I eliminated from net sales of manufactured cement the direct storing and shipping expenses and also the direct selling expenses because those costs are to be eliminated entirely from the computation.

Q Now you mentioned earlier that you did not utilize them up in the direct mining and non-mining costs in arriving at your percentage and you've likewise, then, taken them out of the computation, out of the sales of cement. In taking them out as you have done, some two-thirds of the way down through the exhibit, what effect does that have either as a —to increase or to decrease the depletion allowance?

A Well that has the effect of decreasing the depletion allowance.

Q All right. Then when you get your final net sales figures as adjusted, you've applied the 30.88 percent, [28] correct?

A That is right.

Q And what does that give you?

A This gives, in this particular year, a figure of $1,039,886.62, which is the gross income from mining arrived at through this formula.

Q So from the formula, then, to reach back to the front stage of this operation, you get that figure.

A That is right.

Q And you've applied the depletion rate. Correct?

A That is correct.

Q And then what does that give you?

A This gives the depletion allowance which, of course, is subject to the net income limitation.

Q And your figure for that year was $155,982.99. So that the Court will be aware of what we have done, you have used a different depletion rate, that is fifteen percent in 1970, fourteen percent in '71 and '72.

A That is correct. That statutory rate was changed.

Q Right. Now insofar as the limitation is concerned, that is, under the tax law you're limited to a depletion allowance which cannot exceed fifty percent of your net income per month. You understand that.

A That is right. Yes.

[29] Q And how did you relate back to the figures that you arrived at in Exhibit 7 to get your depletion allowance?

A I started with the gross income from mining figure which I had computed above in this year being $1,039,886.62, and I deducted from that the total direct mining cost and indirect mining costs as computed at the beginning of this exhibit to arrive at net income from mining which, in this year, was $309,653.08. Then I applied the fifty percent limitation figure to arrive at the limitation of $154,826.54.

Q So that in this particular year the limitation gave a depletion allowance slightly less than could have been received had the limitation not been in effect.

A That is right.

Q And summarizing the other two years, the total allowable depletion in 1971 was what amount?

A The allowable depletion in that year was $127,145.42, also as the result of the limitation applying.

Q And what was the situation in 1972 for that fiscal year?

A In March 31st '72, the allowable depletion was $186,223.85. The limitation did not apply in that year.

Q Now, Mr. Decker, in going back—well, let's [30] just go back ten years. Let's start with 1960. Has the general method or manner of producing cement been substantially or materially changed in the company's process?

A No. It's the same basic process.

Q And if we took this same spread of years right through these three years involved, would the first product sold by the company, that is, the bulk cement—would that procedure have changed at all?

A No. Bulk cement has always been our first saleable product.

Q And what about the percentages of bag cement—have those percentages changed materially or have they varied materially over the years?

MR. FREED: Objection, Your Honor. The books and records would be the best evidence for that answer.

THE COURT: Well, I recognize that that is the best evidence but—what's your observation, Mr. Fuller? As to the objection?

MR. FULLER: I wasn't asking him a specific question. We're more concerned with the general processes of the company and the general manner of selling to show a continuity or a similarity.

THE COURT: And your question was what, again?

MR. FULLER: As to the extent to which the [31] volume of bag sales has varied over the years. He has previously testified, I think, to figures of—well ranging between six and eight percent.

MR. FREED: Your Honor, if he has refreshed his recollection recently I withdraw my objection.

THE COURT: Is that right? I mean, Mr. Decker, have you recently checked these figures out?

THE WITNESS: I don't have the specific figures with me—the exact figures—

THE COURT: no, that—

THE WITNESS: But I know that it varied between six and ten percent.

THE COURT: All right. I'll overrule the objection then.

MR. FULLER: One thing I should clarify, Mr. Decker. There may be a discrepancy between the figures indicated on Exhibit 7 and those which I anticipate will show on the respondent's figures in arriving at gross sales, relating to the cost of bags. So that the record is straight, would you explain how the cost of bags is treated, accountingwise, in this operation?

A Yes. The bookkeeping method that has always been followed in the company since I've been associated with it is to take the cost of the empty bags when they are—at the time they are purchased from this bag manufacturer [32] and debit them all to them bag inventory account. Then at the time bags of cement are sold, the cost of the bag is credited to the bag inventory account so that it never is included in the sales figure at all on the records of the company.

Q In summary, then, Mr. Decker, I take it from your testimony that you have read the Ideal Basic Industry decision.

A Yes I have.

Q And you have—you're cognizant of the specific items referred to in the decision?

A Yes.

Q And from an accounting standpoint, have you attempted to follow that decision literally in Exhibit 7?

A Yes I have.

MR. FULLER: You may question the witness.

CROSS EXAMINATION

BY MR. FREED:

Q Mr. Decker, you refer to this white cement in bags—isn't it true that those sales of bag cement are not in controversy between the parties—we've stipulated the treatment of those?

A Not so far as I know.

Q Let me call your attention to—

THE COURT: Well, Mr. Fuller'd be better able to—[33] is that right, Mr. Fuller?

MR. FULLER: Yes. I don't think that's in controversy at all.

THE COURT: All right.

MR. FREED: Mr. Decker, you referred to bulk cement as being a stage in the process—what is there different about bulk cement as opposed to the cement that you manufacture and put in bags?

A It's the same cement. It's just in a bag.

Q And the bulk cement you put in a big bag, in other words, a truck, and the bag cement you put in a small bag weighing 94 pounds, is that correct?

A It contains 94 pounds of cement, yes.

Q Referring to your testimony about the figure that you have used as gross sales on Exhibit 7—

A Yes?

Q Of what is that comprised? I'm directing you particularly to the bag cement—the sales of bag cement that you manufacture.

A Well, as I tried to explain that, our sales figure just simply includes the sale of the cement itself without the empty bag.

Q Now this $3,799,355.81—and this question holds true for all three years—is that the actual receipts from your customers?

[34] A Oh, no. The actual receipts from the customers could include several other items. And, of course, is less than that because of cash discounts.

Q Cash discounts—well, let me start this way. You have told us about an item called bagged premium or premium for bag cement?

A Yes.

Q Now could you explain what that is?

A Well that is the additional price which we charge for cement sold in bags as compared with cement sold in bulk.

Q Now is that figure reflected in your gross sales figure for each year?

A Part of it is. The part of it in excess of the cost of the empty bag itself.

Q So you have included in your gross sales a figure which is attributable to a sale of a bag of cement.

A The sale of the cement contained in the bag, yes. Without the bag itself. Um hum. That's right.

Q And you charge more because the product is bagged.

A Yes.

Q And so how—tell me, how does that fit with your theory that bulk cement is the cutoff point? Aren't [35] you increasing your depletion allowance by increasing your gross sales for an item attributable to bag cement?

A I guess it boils down to a matter of definition. The cement is identical. It is bulk cement. Whether it's sold in a bag or whether it's loaded into a railroad car or truck in bulk. The cement—in other words, what I'm saying is the cement contained in that bag is bulk cement but it is sold in a bag.

Q Could you give us a hypothetical—for example, how many bags would you derive from a barrel of cement?

A There are four bags to the barrel of cement.

Q Four bags to the barrel. Approximately what would a barrel of cement be sold for? $4.50, roughly?

A I really can't tell you that from memory. Since these years we've—the whole industry has changed to billing in terms of hundredweights rather than barrels and I could tell you our current price in hundredweights but not in barrels.

Q May the witness have Exhibit B-4? Would this refresh your recollection, Mr. Decker—turn to page 19 of Exhibit B-4. Would this be a convenient place to start net sales in 1970—$4.21 a barrel?

A It should be a close approximation—it would not be an exact figure because that's just simply taking the net sales figure and dividing it by the total [36] number of barrels shipped. And you see, that would include your white cement, as well as manufactured cement, although that's a very small proportion.

Q Well, may we assume—

A It would be in that neighborhood, yes.

Q May we assume that a barrel of bulk cement would sell for $4.00? If we assumed that, what, in your opinion, would be the price of a bag of cement?

A Assuming this is just a hypothetical computation, I would say in the neighborhood of $1.19 per bag.

Q $1.19 per bag. Now, using those figures—

THE COURT: Based on what figure per barrel? $4.21?

THE WITNESS: I'm basing it on $4.75 per barrel—

MR. FREED: Oh, I'm sorry. I thought—$4.75 a barrel?

A What I'm saying is that in a year in which the price of bulk cement was $4.21, I would guess that the price of bag cement would be around $4.75 per barrel.

Q A dollar—

A For four bags—at $4.75 for a barrel of cement sold in bags—four bags of cement.

Q Okay. Now using those figures, $4.75 for four bags of cement—

[37] A Right.

Q As opposed to $4.21 for a barrel?

A Right.

Q Now using those figures, can you relate that to your bag premium?

A Yes. That, of course, would mean a bag—the difference between the selling price of bulk and bag cement in this hypothetical example would be fifty four cents. Of that fifty four cents, the cost of the empty bags themselves would amount to oh, let's say roughly forty cents for the four bags. So the remaining difference, the fourteen cents, would be the bag premium. That would be the premium charged—

Q The bag premium, right.

A For the fact that it was sold in bags rather than in bulk.

Q Okay, fine. Now in the Year—fiscal year ending 1970 and I believe it would be true for all other years—you tell me if it's not—with respect to a purchaser of four bags of cement for a total price of $4.75, what amount would be included in your gross sales figure?

A Again, assuming that the cost of the empty bags was forty cents per barrel, then a figure of $4.35 would have been included in sales. That would be gross [38] sales before discounts.

Q Four dollars and thirty-five cents. Now how do you get that?

A I was assuming that bag cement was sold at a price of $4.75 per barrel.

Q That's what the purchaser paid you for it, $4.75 for the four bags?

A Right.

Q Okay. Now how much did you include in income, in your gross sales figure?

A In sales, $4.35.

Q Four dollars and thirty-five cents. So you collected forty cents from the customer that you do not have included in your gross sales figure?

A That's right. That was offset against the bag inven-

tory. There may have been other things included that the customer was billed for too, such as sales tax—

Q Yes, but for the purposes of our hypothetical—and this would be true in each of the three years?

A Yes.

Q Now, I notice in your computation, Petitioner's Exhibit 7, you have not eliminated from net sales of manufactured cement this forty cents relating to the cost of bags. And would just tell us briefly why that is?

A As I said before, I was trying to follow the Ideal [39] Basic Industries decision just as closely and as literally as possible. It made no mention that I could see in that decision of subtracting out the premium for bag cement, and yet I know for a fact that Ideal Cement Company does charge a premium for their bag cement.

Q Now, Mr. Decker, I'm talking about the cost of the bags themselves. Well, let help you. You didn't subtract it—

A I didn't subtract it 'cause it was never in there.

Q —because you never included it.

A The cost of the bag itself was never included in the sales figure, so it didn't need to be deducted out.

Q Thank you, very much. Could you tell us just briefly, after the finish grind occurs what happens to the cement?

A It goes into a bulk silo.

Q It goes into a bulk silo, and then from there what happens to the portion that you put in bags?

A It goes into a bin above the bagging machine for bagging.

Q Now, Mr. Decker, referring to Petitioner's Exhibit 7, and directing your attention to the computation that follows your net sales of manufactured cement, you have eliminated direct storing and shipping expenses and direct selling expenses. Why did you not attribute part of the [40] indirect expenses to those departments?

A Again trying to follow literally the Ideal Basic deci-

sion that it made no mention of making any such application. It simply said those expenses should be eliminated entirely from the computation—

Q Yes, Ideal Basic held that—

A It didn't say anything about attributing any portion of indirect costs to them before making that elimination.

Q As an accountant would you—you've testified, if I recall, that the indirect expenses are such things as general administrative expenses?

A Yes.

Q As an accountant would you attribute some of that expense to these cost centers?

A I don't think you can even make such a comparison, because the whole method and approach is, in my mind, is so contrary to any—

Q Well, do you—

A —normal accounting method.

Q —as a businessman—do you as a businessman make those—would you spread those costs between those activities?

A We do not, on our own financial statements make any allocation of indirect costs to storing and shipping and selling expenses, no. It does not appear on any of our [41] financial statements.

Q Are you referring to Exhibit D-4? Do you have it before you? Is that—

A D-4 or D-5?

Q D-4, I believe.

A This is the audit report that you are referring to?

Q Yes. Now this is prepared for you, is it not?

A Yes.

Q Do you play any part in indicating to Lybrand, Ross Brothers and Montgomery what schedules you would like to have in such a package?

A Oh yes, basically the financial statements are our financial statements. The CPA's are simply certifying them as being correct.

Q Would you look at Exhibit D-4 and turn to page 19.

A Yes.

Q Now, do you see there that the fourth line down—

A Yes.

Q —you have spread selling general and administrative expenses to the point of amount per barrel shipped. For each barrel you have computed a cost from those cost items.

A All right.

Q And yet you would think that—you allocate none of the indirect costs to—

A They have not been allocated on this statement, no. [42] The selling general and administrative expenses as shown on this statement are the direct costs of those departments. There has been no allocation made of the general and administrative or other indirect costs to those expenses, no.

Q And you do not think, as an accountant, that those departments should bear a proportionate part of the costs of the—such as the general administrative overhead?

A Well, you see this figure you are referring to is selling general and administrative expenses.

Q Yes.

A In other words, all of those items together are on one line.

Q Yes. But doesn't this statement recognize that as a charge against each barrel of cement?

A This statement does make the computation of dividing that total line item by the number of barrels shipped—

Q And if you—

A —to get an amount per barrel shipped, yes.

Q Yes, and if you make a charge against each barrel of cement that you produce, isn't it only logical that you

would spread the charge against these departments, storing, and shipping, and selling?

A I really don't follow you there—that isn't what this statement does or—

Q This statement does not—

[43] A —shows at all.

Q —I realize that. I'm asking you, as an accountant, whether you would?

A That depends entirely on the purpose for which you're making the computation preparing the statement.

Q Your storage costs, do they include the costs of storing the bulk cement?

A Yes.

MR. FREED: I have no further questions, Your Honor.

THE COURT: Any redirect, Mr. Fuller?

MR. FULLER: We have no further redirect.

THE COURT: Thank you, very much, Mr. Decker. You may step down.

(Witness excused)

MR. FULLER: We rest our case.

THE COURT: Mr. Freed, do you have a witness?

MR. FREED: Call Mr. Davitt, please.

THE CLERK: Raise you right hand. You do solemnly swear that the testimony you are about to give in the case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Please state your name and address for the record.

THE WITNESS: My name is William H. Davitt. [44] D-a-v-i-t-t.

MR. FREED: I'll ask Mr. Fuller if he would waive any foundation for my depletion computations?

MR. FULLER: I should make one statement to the Court. I have examined the computations that have been

made—I have studied them. They do, as I understand it, represent their theory of the case. We have, of course, a basic objection to them using them in that we understand they do not follow Ideal Basic and the Portland Cement of Utah case, which we would like to have as a continuing objection. Now, we have no objection to them showing what they're doing.

THE COURT: Well, you're entitled to you're continuing objection—

MR. FREED: I'm in no way limiting my offer. I'm offering this as evidence in the case. Shall I lay a foundation?

MR. FULLER: Why don't you do that. I would like to make a formal objection on the grounds that I've indicated. Go ahead.

WILLIAM H. DAVITT,

called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. FREED:

Q Mr. Davitt, would you state your present employment, [45] please?

A I'm senior mining engineer with the Internal Revenue Service with the Office of the Assistant Commissioner Technical in the Engineering and Valuation branch in Washington, D.C.

Q And how long have you been in that position?

A I've been in that branch since 1959.

Q Could you tell the Court briefly your educational background?

A I'm a graduate mining engineer with a B.S. in mining engineering from Pennsylvania State University.

Q Could you describe briefly what duties you discharge in the course of your employment?

A Currently my immediate position is primarily a reviewer of other engineers and geologists in our branch,

who perform engineering assistance work in the administration of the Internal Revenue laws. On occasion I'm assigned cases to do the same type of work as necessary. This can involve many of the engineering issues, such as depletion computations, in "Brooling" letters, technical advice, litigation cases and things like that.

Q In the course of your duties have you become familiar with the proportionate profits method of computing depletion?

A Yes, I have.

Q Do you make depletion computations in the course of [46] your work?

A Yes, I do.

Q Have you ever made such computations in connection with the cement industry?

A Yes, I have.

Q Could you tell us the names of some of the cases in which you worked at our—litigated cases?

A Well, I worked on some of the computations involved [sic] in Standard Lime and Cement case in the Court of Claims, the Whitehall case in the Third Circuit, the Ideal case in the Tenth Circuit, and of course Portland of Utah case.

MR. FREED: May I have this marked, please?

THE CLERK: Respondent's Exhibit F, marked for identification.

MR. FREED: Mr. Davitt, I'll hand you what has been marked for identification as Respondent's Exhibit F, and ask if you can tell without testifying from the document, tell us what that is?

A That's the depletion computations I prepared for this case.

Q From what was it prepared?

A The information on that is primarily from the Stipulations of Fact that are presented.

Q Well, is there in fact any other source?

A Well, some of the figures on there are computations [47] which have resulted from information either from the tax return or from information given to me during the present preparation of the stipulations.

MR. FREED: I offer into evidence what has been marked as Respondent's Exhibit F, consisting of six pages, covering fiscal years ending March 31st, 1970, 1971, and 1972.

THE COURT: Mr. Fuller?

MR. FULLER: May I question the witness in aid of an objection?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FULLER:

Q Mr. Davitt, I have seen your computations, I am familiar with them. These purport to follow the proportionate profits formula. Would that be correct?

A That's correct.

Q Do these computations—well, first let me ask you this. You stated that your are familiar with the Ideal Basic Industry's case and computations that you made under it.

A Yes, I am.

Q And you are familiar with the decision, the accounting aspects?

A Yes, to some extent.

Q Do you represent that Exhibit F contains computations that accord or conform with Ideal Basic decision?

[48] MR. FREED: Your honor, I believe this is improper. It sounds like cross-examination.

THE COURT: No, I'll overrule the objection.

THE WITNESS: I'll put it this way. The computations correspond to my interpretation of the regulations and to the extent that the Ideal decision conflicts with the regulations then they do conflict with that.

MR. FULLER: We would object to their admissability on the grounds that they do not follow the established law of Ideal Basic Industries as set forth in this Circuit.

THE COURT: Well, I'm going to overrule the objection and receive it in evidence. It's received as Respondent's Exhibit F.

THE CLERK: Exhibit F.

MR. FULLER: And may we have a continuing objection to all of the exhibits and the testimony given in support of those portions that do conflict?

THE COURT: Yes, you may, Mr. Fuller, and you do.

DIRECT EXAMINATION (resumed)

BY MR. FREED:

Q Mr. Davitt, I'll hand you what has been received in evidence as Respondent's Exhibit F—would the Court like a copy of Exhibit F?

THE COURT: Yes, please.

MR. FREED: Mr. Davitt these computations follow [49] the same format and the theory for all three years, is that true?

A That's correct.

Q In preparing the computations what did you consider as a first marketable product?

A Finished cement in bulk and bagged form.

Q Why did you consider the finished cement in both bulk and bagged form as the first marketable product?

A Because that was the product that was sold to generate the sales figure that was used to allocate. In other words, I felt, as does the regulations, that bulk and bagged cement are one in the same product, it's only different volumes of the same product.

Q At what point in your computation have you assumed that mining ceases and manufacturing begins?

A Where the slurry is entered into the kiln.

Q Would you describe briefly for the Court your computation and how it was derived?

A Well, my computation, first of all involves the identification of the costs—the total costs necessary to generate a certain amount of income. In this case the amount of income is found on page 2. And that figure is $3,614,822.10. That sales figure—

Q Is that not $829.10.

A That's correct. The costs incurred by the taxpayer per the stipulation, to arrive at that figure are taken and [50] identified either as mining costs, non-mining costs, or allocable costs, which are the indirect costs—well, I'll discuss that in a minute. The mining costs are the costs incurred by the taxpayer up to the production of the slurry and are identified as quarry costs, two hundred and twenty-one thousand—

Q Mr. Davitt, the Court has a copy before it as does opposing counsel. We won't need to read the amounts.

A I'll just use the term. The quarry costs, the hauling of the rock, and the first entry of raw grind and blending costs are costs attributable to processing the taxpayer's mined materials.

Q Mr. Davitt, let me interrupt you at this point. Do you notice that on Petitioner's Exhibit 7, may I have that please, do you notice at this point that what you have allocated as mining at the raw grind and blend differs in a slight way from what the petitioner has. Could you account for that?

A Yes. The raw grinding and blending was a lump sum amount and an allocation had to be made between the mined material of the taxpayer and the purchase material of the taxpayer. This was done on a tonnage basis, and is reflected in a footnote on page 2. The computation there shows how I took the tonnage relationship to compute that percentage and allocated the total costs of three hundred and [51] eighty-three, eight seventy-two point sixty-one between mining and non-mining. The difference between my computation and the taxpayers computation, as far as I could see, only deals with the number of decimal points carried out and how far we carried it out.

Q Go ahead with your explanation. You were at the point of purchased additives.

A Okay. I allocated the raw grinding between—across the mined material and the purchased material, and then I included the purchased additives as a cost in non-mining, along with the burning and cooling activity, the finished grinding activity and the—in this case, since I used income as a result of selling the materials in bags after certain shipping and storing costs and bagging costs were incurred, I included those costs as direct non-mining costs, as well as the selling expense, since those costs were incurred by the taxpayer in the production of the income. I arrived at a direct cost ratio of point two seven five.

Q Excuse me, Mr. Davitt, would you express the fraction that produces that ratio?

A The direct cost ratio of point two seven five, is obtained by dividing the direct mining costs of the six hundred and twenty-two thousand six forty-two point forty-five by the total cost of two million, two hundred [52] sixty-three, six fifty-six point eighty-eight. Based upon that direct cost ratio, I then allocated, as a lump sum, the three hundred and forty-eight thousand, four hundred and sixty-six point forty-four of allocable costs, which included indirect costs. That figure allocated not—I mean as a result of that allocation, ninety-five thousand, eight hundred and twenty-eight point twenty-seven was allocated to mining. That indirect amount allocated to mining, when added to the direct costs of mining of six twenty-two, six forty-two point forty-five above, gives the total mining cost of seven hundred and eighteen thousand, four hundred and seventy point seventy-two dollars. Taking that and going over to the next page, I took a ratio of that total mining costs, seven hundred and eighteen, four seventy point seventy-two over the total cost, direct and allocable, of two million, six hundred and twelve, one twenty-two point thirty-two, to arrive at a ratio of point twenty-seven fifty. That ratio will be used later on. Then, in order to allocate the sales, in order to compute gross income from mining, which was by formula the sales times

the mining ratio, I used the figure—starting figure for the Stipulation of gross sales per the return. That figure is three million, seven hundred ninety-nine, three fifty-five point eighty-one. I added to that the bag costs, which Mr. Ashby just [53] testified, was not included in that figure. I also subtracted from that the purchase cement figure of thirty-seven thousand, nine hundred and thirty-seven point ninety-seven and the cash discounts of one sixty-four, six twenty-two point seventy-four—

Q Mr. Davitt, I'd prefer that you not read the numbers. I think it would be understood that the printed numbers on the exhibit would prevail over what the record might show.

A Okay. This arrived at a sales figure, which is identified there. That sales figure is then multiplied by the point two seven five ratio, to arrive at gross income for mining. That figure is then—from that figure I subtract the mining costs which are determined on the first page, to arrive at a taxable income figure—taxable income from the property. That figure is then divided in half or fifty per cent of it to establish the limitation. I multiplied fifteen per cent times the gross income from mining and determined that the allowable depletion is based upon the fifty per cent taxable income limitation and is the figure one hundred thirty-seven thousand, eight hundred and three dollars and sixty-four cents.

Q I have no further questions, Your Honor.

THE COURT: Any cross examination, Mr. Fuller?

[54] MR. FULLER: Yes.

CROSS EXAMINATION

BY MR. FULLER:

Q Mr. Davitt, except for a few dollars on one item there, the figures that you have used and Mr. Decker have used, do in fact conform, don't they?

A The figures that are involved here, yes.

Q Yes. The figures conform. The results are different.

A They are used a little differently.

Q And, have you had an opportunity to look at the deficiency notice, set in forth the deficiencies for the three years in the ninety day letter?

A Yes, I did see them.

Q And, would it be a fair statement to say that the original deficiency notice attempted to follow the Ideal Basic Decision? In a manner, at least.

A It attempted to—well, I'll have to be—this will have to be an opinion. In my opinion, it attempted to follow the Ideal to some extent, maybe not literally, but by interpreting the language of Ideal in connection with the case is cited in Ideal as a basis for their holding.

Q Now, would it be a fair statement to say that at this juncture of the case, you have abandoned any attempt to follow the Ideal Basic Decision? Literally.

[55] A Well, I'll put it this way. The computation that is performed here will produce the same result to my interpretation of Ideal.

Q And would it be a fair statement to say that your interpretation of Ideal would nullify any real meaning to that—of that decision?

A I don't know what you mean by a meaning to that decision.

Q Well, let's restate it. As you have attempted to follow Ideal Basic with the adjustments you have made to it, you would come around to a result, would you not, under the proportionate profits formula, that would render the Ideal Basic Decision a nullity or at least it would have no legal effect as being different from the law of other circuits?

A I'm afraid I can't answer that completely, because I didn't go back to re-examine all of the individual holdings in Ideal. I might summarize it by saying that if you interpret Ideal in a certain manner and not perhaps with the literal wording of Ideal decision, but by going back to other cases, you can get a result mathematically that will be similar to this result, except for perhaps for certain in-

direct allocations. But, the overall result will be esentially the same as this. And I'll put it this way. That in Ideal, they cited [56] considerably Standard Lime. Standard Lime talked about eliminations. They talked about these eliminations in connection with profits, so that where we make a one step adjustment here, in other words, we eliminate say, all of the non-mining all in one phase, the results that you could get from interpretations, I believe to be made under Ideal, by taking this in several steps. In other words, if you eliminated the bagging activity. But if you eliminate the cost of the bagging activity, both direct and indirect, and a profit to it and took that then out of the computation, and then took that point and started to work back, you would arrive at the same result that you can get this way.

Q And if that were the case and you did it that way then, we wouldn't worry about the Ideal Basic Decision, would we?

A Uh, well I don't know what you mean by "we worrying about the Ideal". I'm not.

Q Well, let's put it a little more bluntly. Isn't the purpose and the position of the respondent here in Court today one of attempting to get Ideal Basic Decision—the Ideal Basic Decision overruled.

A I think that's—

MR. FREED: Objection, Your Honor. He's not qualified to answer the question. I'll be glad to answer [57] it if the Court wants.

THE COURT: Well, if he can't answer it—I mean if he doesn't know, he can say I don't know, but—

MR. FREED: Well, he may know, but he is not qualified to answer.

THE COURT: I'm going to let him answer, Mr. Freed.

THE WITNESS: Would you state that question again so I can answer it?

MR. FULLER: Do you know whether it is a fact that the position of the respondent in this case is premised upon attempting to get the Ideal Basic Decision overruled?

A I believe the answer is yes, because the Ideal—

THE COURT: Well, you answered the question yes.

* * * * *

DEPLETION COMPUTATION
Fiscal Year Ending March 31, 1970
(Petitioner's Computation under U. S. v. Ideal Basic Industries, Inc., 404 F. 2d 122)

	Total	Mining	Non-Mining
Quarry	$221,604.56	$221,604.56	
Hauling	96,496.40	96,496.40	
Raw grinding & blending	383,872.61	304,526.14	$ 79,346.47
Purchased additives	129,358.72		129,358.72
Burning and cooling	917,352.00		917,352.00
Finish grinding	267,651.96		267,651.96
	$2,016,336.25	$622,627.10	$1,393,709.15

$622,627.10 ÷ $2,016,336.25 = 30.88 %

Allocate:

Indirect costs, less contributions (including P.C.A. dues)	348,466.44	107,606.44	240,860.00
Totals	$2,364,802.69	$730,233.54	$1,634,569.15

Gross Sales:	$3,799,355.81
Less : Cash discounts	- 164,622.74
Less: Sales of purchased cement	- 37,937.97
Net sales of manufactured cement	$3,596,795.10
Eliminate from the computation:	
Direct storing & shipping expenses	- 182,108.16
Direct selling expenses	- 47,178.47
	$3,367,508.47
Mining costs percentage computed above	30.88%
Gross income from mining	$1,039,886.62
Depletion rate.	15%
Depletion allowance	$ 155,982.99

LIMITATION

Gross income from mining	$1,039,886.62
Less: Total direct and indirect mining costs	- 730,233.54
Net income from mining	$ 309,653.08
	50%
Limitation:	$ 154,826.54

[Exhibit 7]

DEPLETION COMPUTATION

Fiscal Year Ending March 31, 1971

(Petitioner's Computation under U. S. v. Ideal Basic Industries, Inc., 404 F. 2d 122)

	Total	Mining	Non-Mining
Quarry	$225,752.56	$225,752.56	
Hauling	88,758.45	88,758.45	
Raw grinding & blending	388,817.42	280,959.47	$107,857.95
Purchased additives	134,904.91		134,904.91
Burning & cooling	852,549.97		852,549.97
Finish grinding	321,539.18		321,539.18
	$ 2,012,322.49	$ 595,470.48	$1,416,852.01

$ 595,472.48 ÷ 2,012,322.94 = 29.59%

Allocate:

Indirect costs, less contributions (including P.C.A. dues)	257,496.55	76,193.23	181,303.32
Totals	$2,269,819.04	$671,663.71	$1,598,155.33

Gross Sales:	$3,571,698.61
Less: Cash discounts	- 150,987.27
Less: Sales of purchased cement	- 46,113.57
Net sales of manufactured cement	$3,394,597.77
Eliminate from the computation:	
Direct storing & shipping expense	- 217,970.58
Direct selling expenses	- 47,345.19
	+ 3,129,282.00
Mining costs percentage computed above	29.59%
Gross income from mining	$ 925,954.54
Depletion rate	14 %
Depletion allowance	$ 129,633.64

LIMITATION

Gross income from mining	925,954.54
Less: Total direct and indirect mining costs	- 671,663.71
Net income from mining	$ 254,290.83
	50 %
Limitation	$ 127,145.42

DEPLETION COMPUTATION

Fiscal Year Ending March 31, 1972

(Petitioner's Computation under U. S. v. Ideal Basic Industries, Inc., 404 F. 2d 122)

	Total	Mining	Non-Mining
Quarry	$267,040.52	$267,040.52	
Hauling	120,195.90	120,195.90	
Raw grinding & blending	402,582.94	328,346.65	$74,236.29
Purchased additives	112,007.80		112,007.80
Burning & Cooling	1,125,823.86		1,125,823.86
Finish grinding	324,823.65		324,823.65
	$2,352,476.67	$715,583.07	$1,636,893.60

$ 715,583 ÷ $2,352,477 = 30.42%

Allocate:			
Indirect costs, less contributions (including P.C.A. dues)	437,242.15	133,009.06	304,233.09
Totals	$2,789,718.82	$848,592.13	$1,941,126.69

Gross Sales:	$4,891,897.56
Less: Cash discounts	- 191,778.89
Less: Sales of purchased cement	- 44,687.34
Net sales of manufactured cement	$4,655,431.33
Eliminate from the computation:	
Direct storing and shipping expenses	- 228,744.12
Direct selling expenses	- 54,002.63
	$4,372,683.58
Mining costs percentage computed above	30.42%
Gross income from mining	$1,330,170.35
Depletion rate	14 %
Depletion allowance	$ 186,223.85

LIMITATION

Gross income from mining	$1,330,170.35
Less: Total direct and indirect mining costs	- 848,592.13
Net income from mining	$ 481,578.22
	50 %
Limitation	$ 240,789.11

EXF

PORTLAND CEMENT CO. OF UTAH
FYE 3-31-70
DEPLETION COMPUTATION

COST CLASSIFICATION	TOTAL	MINING	NONMINING	ALLOCABLE
Quarry	$ 221,604.56	$ 221,604.56		
Hauling Rock	$ 96,496.40	$ 96,496.40		
1) Raw Grind-Blending	$ 304,541.49	$ 304,541.49		
2) Raw Grind-Blending Purchased Additives	$ 79,331.12		$ 79,331.12	
Purchased Additives	$ 129,358.72		$ 129,358.72	
Burning-Cooling	$ 917,352.00		$ 917,352.00	
3) Finish Grinding	$ 267,651.96		$ 267,651.96	
Storing-Shipping-Bagging	$ 182,108.16		$ 182,108.16	
Bag Costs	$ 18,034.00		$ 18,034.00	
Selling Expense	$ 47,178.47		$ 47,178.47	
Total Direct Cost	$2,263,656.88	$ 622,642.45	$1,641,014.43	
Direct Cost Ratio		.2750		
PCA Dues	$ 35,268.85			$ 35,268.85
Indirect Costs	$ 314,255.59			$ 314,255.59
Contributions	$ (1,058.00)			$ (1,058.00)
Subtotal Allocable Costs	$ 348,466.44	$ 95,828.27	$ 252,638.17	$ (348,466.44)
Total Direct and Allocable Costs	$2,612,123.32	$ 718,470.72	$1,893,652.60	

[-1-]

[Exhibit F]

EXF

Mining Ratio = Total Mining Cost ÷ Total Cost

Mining Ratio = $718,470.72 ÷ $2,612,123.32 = .2750

Gross Income from Mining = Sales x Mining Cost Ratio

Sales = Gross Sales Per Return + Bag Costs - Purchased Cement - Cash Discounts

Sales = $3,799,355.81 +$18,034.00 -$37,937.97 -$164,622.74 = $3,614,829.10

Gross Income from Mining (GIFM) = $3,614,829.10 x .2750 =	$994,078.00
Less: Mining Costs	$718,470.72
Taxable Income from Property	$275,607.28
50% of Taxable Income	$137,803.64
15 % of GIFM	$149,111.70
Allowable Depletion	$137,803.64

96

FOOTNOTES:

(1) Adjust raw grinding and blending costs to compute cost of raw grinding and blending taxpayer's quarry rock on tonnage basis.

$$\frac{\text{tons quarry rock}}{\text{tons total material used}} = \frac{196,903}{196,903 + 34,997 + 2,728 + 13,567} = 79.334$$

$383,872.61 x 79.334 % = $304,541.49

(2) Cost of raw grinding and blending purchased additives.

$383,872.61 x 20.666 % = $79,331.12

(3) Includes cost of purchased gypsum.

PORTLAND CEMENT CO. OF UTAH
FYE 3-31-71
DEPLETION COMPUTATION

COST CLASSIFICATION	TOTAL	MINING	NONMINING	ALLOCABLE
Quarry	$ 225,752.56	$ 225,752.56		
Hauling Rock	$ 88,758.45	$ 88,758.45		
1) Raw Grind-Blending	$ 280,959.47	$ 280,959.47		
2) Raw Grind-Blending Purchased Additives	$ 107,857.95		$ 107,857.95	
Purchased Additives	$ 134,904.91		$ 134,904.91	
Burning-Cooling	$ 852,549.97		$ 852,549.97	
3) Finish Grinding	$ 321,539.18		$ 321,539.18	
Storing-Shipping-Bagging	$ 217,970.58		$ 217,970.58	
Bag Costs	$ 18,413.00		$ 18,413.00	
Selling Expense	$ 47,345.19		$ 47,345.19	
Total Direct Cost	$2,296,051.26	$ 595,470.48	$1,700,580.78	
Direct Cost Ratio		.2593		
PCA Dues	$ 20,032.84			$ 20,032.84
Indirect Costs	$ 238,088.71			$ 238,088.71
Contributions	$ (625.00)			$ (625.00)
Subtotal Allocable Costs	$ 257,496.55	$ 66,768.86	$ 190,727.69	$ (257,496.55)
Total Direct and Allocable Costs	$2,553,547.81	$ 662,239.34	$1,891,308.47	

Mining Ratio = Total Mining Cost ÷ Total Cost

Mining Ratio = $662,239.34 ÷ $2,553,547.81 = .2593

Gross Income from Mining = Sales x Mining Cost Ratio

Sales = Gross Sales Per Return + Bag Costs - Purchased Cement - Cash Discounts

Sales = $3,591,698.61 + $18,413.00 - $46,113.57 - $150,987.27 = $3,413,010.77

Gross Income from Mining (GIFM) = $3,413,010.77 x .2593 =	$884,993.69
Less: Mining Costs	$662,239.34
Taxable Income from Property	$222,754.35
50% of Taxable Income	$111,377.18
14 % of GIFM	$123,899.12
Allowable Depletion	$111,377.18

FOOTNOTES:

(1) Adjust raw grinding and blending costs to compute cost of raw grinding and blending taxpayer's quarry rock on tonnage basis.

$$\frac{\text{tons quarry rock}}{\text{tons total material used}} = \frac{161,379}{161,379 + 45,391 + 1,820 + 14,740} = 72.26$$

$388,817.42 x 72.26 % = $280,959.47

(2) Cost of raw grinding and blending purchased additives.

$388,817.42 x 27.74 % = $107,857.95

(3) Includes cost of purchased gypsum.

Attachment

PORTLAND CEMENT CO. OF UTAH
FYE 3-31-72
DEPLETION COMPUTATION

COST CLASSIFICATION	TOTAL	MINING	NONMINING	ALLOCABLE
Quarry	$ 267,040.52	$ 267,040.52		
Hauling Rock	$ 120,195.90	$ 120,195.90		
1) Raw Grind-Blending	$ 328,306.39	$ 328,306.39		
2) Raw Grind-Blending Purchased Additives	$ 74,276.55		$ 74,276.55	
Purchased Additives	$ 112,009.80		$ 112,009.80	
Burning-Cooling	$1,125,823.86		$1,125,823.86	
3) Finish Grinding	$ 324,823.65		$ 324,823.65	
Storing-Shipping-Bagging	$ 228,744.12		$ 228,744.12	
Bag Costs	$ 20,027.00		$ 20,027.00	
Selling Expense	$ 54,003.63		$ 54,003.63	
Total Direct Cost	$2,655,251.42	$ 715,542.81	$1,939,708.61	
Direct Cost Ratio		.2695		
PCA Dues	$ 18,186.85			$ 18,186.85
Indirect Costs	$ 420,735.30			$ 420,735.30
Contributions	$ (1,680.00)			$ (1,680.00)
Subtotal Allocable Costs	$ 437,242.15	$ 117,836.76	$ 319,405.39	$ (437,242.15)
Total Direct and Allocable Costs	$3,092,493.57	$ 833,379.57	$2,259,114.00	

Mining Ratio = Total Mining Cost ÷ Total Cost

Mining Ratio = $833,379.57 ÷ $3,092,493.57 = .2695

Gross Income from Mining = Sales x Mining Cost Ratio

Sales = Gross Sales Per Return + Bag Costs - Purchased Cement - Cash Discounts

Sales = $4,891,897.56 + $20,027.00 - $44,687.34 - $191,778.89 = $4,675,458.33

Gross Income from Mining (GIFM) = $4,675,458.33 x .2695 =	$1,260,036.02
Less: Mining Costs	$ 833,379.57
Taxable Income from Property	$ 426,656.45
50% of Taxable Income	$ 213,328.23
14 % of GIFM	$ 176,405.04
Allowable Depletion	$ 176,405.04

FOOTNOTES:

(1) Adjust raw grinding and blending costs to compute cost of raw grinding and blending taxpayer's quarry rock on tonnage basis.

$$\frac{\text{tons quarry rock}}{\text{tons total material used}} = \frac{237,211}{237,211 + 35,789 + 2,498 + 15,347} = 81.55$$

$402,582.94 x 81.55 % = $328,306.39

(2) Cost of raw grinding and blending purchased additives.

$402,582.94 x 18.45 % = $ 74,276.55

(3) Includes cost of purchased gypsum.

UNITED STATES TAX COURT

Docket No. 6306-73

[Filed September 16, 1977]

PORTLAND CEMENT COMPANY OF UTAH, A Corporation, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

JOINT MOTION TO REOPEN RECORD

THE PARTIES JOINTLY MOVE the Court to reopen the record in this case to receive as evidence the attached stipulations of fact.

IN SUPPORT THEREOF, the parties jointly state:

1. On May 9, 1977, the Court filed its memorandum opinion in this case, the opinion being designated T. C. Memo. 1977-137.

2. On June 8, 1977, respondent filed his "Motion for Reconsideration of Findings and Opinion," asking, *inter alia*, that the Court make findings relative to "bag premium."

3. By its Order dated June 9, 1977, and in a subsequent telephone conversation among the parties and the Court, the parties were requested to supplement the record with evidence concerning "bag premium."

4. Attached are stipulations by the parties concerning "bag premiums."

U.S. TAX COURT
GRANTED

SEP 23 1977
(signed) WM. M. FAY
JUDGE

WHEREFORE, the parties pray that the Court reopen the record in this case to receive the attached stipulation.

STUART E. SEIGEL
Chief Counsel
Internal Revenue Service

By: _____
S. CLAY FREED
Assistant Regional Counsel
P. O. Box 2520
Salt Lake City, Utah 84110
Tel. No. 801-524-5815
Date: Sep 12 1977

/s/ _____
GLEN E. FULLER
Counsel for Petitioner
15 East Fourth South
Salt Lake City, Utah 84111
Tel. No. 801-363-7187
Date: Sep 12 1977

UNITED STATES TAX COURT

Docket No. 6306-73

[Filed September 23, 1977]

PORTLAND CEMENT COMPANY OF UTAH, A CORPORATION, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

SUPPLEMENTAL STIPULATION OF FACTS

The parties agree that the following statements and attached exhibits may be accepted as facts for the purpose of this case.

1. Attached as Exhibit 8 is a copy of a document captioned "Calculation of Bag Premiums."

2. Attached as Exhibit 9 is a copy of a document captioned "Comparison of Bagging Costs with Bag Premium."

3. Attached as Exhibit 10 are copies of documents showing for each of the fiscal years ended March 31, 1970, 1971, and 1972, the method used in determining bagging costs shown on Exhibit 9.

4. The parties agree that although for each year there was an excess of costs over bag premium, as shown on

Exhibit 9, petitioner nevertheless realized a net profit on the sale of each bag of cement.

STUART E. SEIGEL
Chief Counsel
Internal Revenue Service

By: _____
S. CLAY FREED
Assistant Regional Counsel
P. O. Box 2520
Salt Lake City, Utah 84110
Tel. No. 801-524-5815

Date: Sept 12, 1977

GLEN E. FULLER
Counsel for Petitioner
15 East Fourth South
Salt Lake City, Utah 84111
Tel. No. 801-363-7187

Date: Sept. 12, 1977

PORTLAND CEMENT COMPANY OF UTAH

CALCULATION OF BAG PREMIUMS

	Bulk	Bags	Premium for Bagged Cement	Bag Premium
4/1/69 to 12/31/69	$4.33/bbl.	5.13/bbl.	.80/bbl.	
Barrels of bagged cement sold			52,333-1/2	41,866.80
1/1/70 to 3/31/70	4.58/bbl.	5.48/bbl.	.90/bbl.	
Barrels of bagged cement sold			8,078	7,270.20
				49,137.00
4/1/70 to 12/31/70	4.58/bbl.	5.48/bbl.	.90/bbl.	
Barrels of bagged cement sold			52,491-1/2	47,242.35
1/1/71 to 3/31/71	4.83/bbl.	5.83/ bbl.	1.00/bbl.	
Barrels of bagged cement sold			8,935-1/4	8,935.25
				56,177.60
4/1/71 to 12/31/71	4.83/bbl	5.83/bbl.	1.00/bbl.	
Barrels of bagged cement sold			50,521-1/2	50,521.50
1/1/72 to 3/31/72	1/28 cwt. 4.8128/bbl	1.46/bag 5.84/bbl.		
Barrels of Bagged Cement sold			14,316-1/4	
		DKT NO. 6366-73		14,705.65
		P EXH. 8		65,227.15

[Exhibit 8]

PORTLAND CEMENT COMPANY OF UTAH

COMPARISON OF BAGGING COSTS WITH BAG PREMIUM

	FY 3/31/70	FY 3/31/71	FY 3/31/72
Bag premium	$ 49,137.00	$ 56,177.60	$ 65,227.15
Cost of empty bags	18,034.00	18,413.00	20,027.00
Bagging Costs:			
Payroll and benefits	51,981.63	58,988.58	63,386.53
Supplies and maintenance	1,965.26	3,784.41	4,000.73
Electrical	3,038.76	2,809.64	3,435.12
Shop	6,194.78	13,260.39	10,985.96
General costs applied	17,564.87	19,512.46	20,795.80
Power	5,699.05	5,356.40	6,365.97
Depreciation	69.53	720.17	820.45
	104,547.88	122,845.05	129,817.56
Excess of costs over bag premium	$ 55,410.88	$ 66,667.45	$ 64,590.41

DKT NO. 6306-73
P EXH. 9

[Exhibit 9]

PORTLAND CEMENT COMPANY OF UTAH

ALLOCATION OF STORING, SHIPPING & BAGGING EXPENSES

FISCAL YEAR ENDED MARCH 31, 1970

		Bulk	Bags	
	Foreman	Bulk-Loaders	Wheelers & Bagging Mach. Op.	Total
3/31/70 Labor	9,550.00	15,502.38	37,182.91	62,235.29
	15.4%	24.9%	59.7%	100 %
Profit Sharing	1,179.90			1,179.90
Employee Benefits	1,576.26	2,548.63	6,110.57	10,235.46
	12,306.16	18,051.01	43,293.48	73,650.65
		29.4 %	70.6%	
Allocate Foreman	(12,306.16)	3,618.01	8,688.15	
Labor, Employee benefits and Profit Sharing		21,669.02	51,981.63	73,650.65
Supplies and maintenance	(50-50)	1,965.26	1,965.26	3,930.52
Electrical	(50-50)	3,038.76	3,038.76	6,077.52
Shop	(50-50)	6,194.78	6,194.78	12,389.56
General Mfg. Costs.	(50-50)	17,564.88	17,564.87	35,129.75
Power	(25-75)	1,899.68	5,699.05	7,598.73
Switching charges		3,922.13	-0-	3,922.13
Rental- Storage silos		30,000.00	-0-	30,000.00
Depreciation		9,339.77	69.53	9,409.30
		95,594.28	86,513.88	182,108.16

DKT NO. 6306-73
P EXH. 10

[Exhibit 10]

PORTLAND CEMENT COMPANY OF UTAH

ALLOCATION OF STORING, SHIPPING & BAGGING EXPENSES

FISCAL YEAR ENDED MARCH 31, 1971

		Bulk	Bags	
	Foreman	Bulk Loaders-	Wheelers and Baggers	Total
Labor	10,350.00	18,622.42	42,108.09	71,080.51
Comparative percentage	14.6%	26.2 %	59.2 %	100%
Profit -Sharing	1,073.10	-0-	-0-	1,073.10
Employee Benefits	1,888.10	3,388.22	7,655.83	12,932.15
	13,311.20	22,010.64	49,763.92	85,086.76
		30.7%	69.3 %	
Allocate foreman	(13,311.20)	4,086.54	9,224.66	
Labor, employee benefits and Profit Sharing		26,097.18	58,988.58	85,085.76
Supplies and maintenance		3,784.41	3,784.41	7,568.82
Electrical		2,809.65	2,809.64	5,619.29
Shop		13,260.39	13,260.39	26,520.78
General Manufacturing Costs		19,512.46	19,512.46	39,024.92
Power		1,785.47	5,356.40	7,141.87
Switching Charges		4,049.22	-0-	4,049.22
Rental of storage silos		30,000.00	-0-	30,000.00
Depreciation		12,239.75	720.17	12,959.92
		113,538.53	104,432.05	217,970.58

PORTLAND CEMENT COMPANY OF UTAH

ALLOCATION OF STORING, SHIPPING & BAGGING EXPENSES

FISCAL YEAR ENDED MARCH 31, 1972

		Bulk	Bags	
	Foreman	Bulk Loaders (Toppers)	Wheelers and Baggers	Total
Labor	10,550.00	22,610.64	44,951.62	78,112.26
comparate percentage	13.5%	28.9%	57.6 %	100%
Profit Sharing	1,579.20			1,579.20
Employee Benefits	2,102.53	4,500.98	8,970.81	15,574.32
	14,231.73	27,111.62	53,922.43	95,265.78
		33.5 %	66.5%	
Allocate foreman	(14,231.73)	4,767.63	9,464.10	
Labor, employee benefits and Profit Sharing		31,879.25	63,386.53	95,265.78
Supplies and maintenance		4,000.72	4,000.73	8,001.45
Electrical		3,435.13	3,435.12	6,870.25
Shop		10,985.95	10,985.96	21,971.91
General Manufacturing Costs		20,795.80	20,795.80	41,591.60
Power (25-75)		2,121.99	6,365.97	8,487.96
Switching Charges		3,417.49		3,417.49
Rental of storage silos		30,000.00		30,000.00
Depreciation		12,317.23	820.45	13,137.68
		118,953.56	109,790.56	228,744.12

UNITED STATES TAX COURT

Docket No. 6306-73

[Filed November 11, 1977]

PORTLAND CEMENT COMPANY OF UTAH, A CORPORATION, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation is submitted, on behalf of the respondent, in compliance with the Court's opinion determining the issues in this case, together with a proposed decision which is being lodged concurrently with said computation.

This computation is being submitted without prejudice to respondent's right to contest the correctness of the decision entered herein by the Court.

STUART E. SEIGEL,
Chief Counsel,
Internal Revenue Service.

By: _____

S. CLAY FREED
Assistant Regional Counsel

OF COUNSEL:
EMORY L. LANGDON,
Regional Counsel,
S. CLAY FREED,
Attorney,
Internal Revenue Service.
P.O. Box 2520
Salt Lake City, Utah 84110
Tel. No. (801) 524-5815

Without prejudice to the right of appeal, it is agreed that the attached computation is in accordance with the opinion of the Tax Court in the above-entitled case.

/s/ _____
GLEN E. FULLER,
Counsel for Petitioner.

CC: SLC: TC
SCF: JAG

COMPUTATION STATEMENT

In re: Portland Cement Company of Utah,
A Corporation
615 West 8th South Street
P.O. Box 1469
Salt Lake City, Utah 84110

Docket No. 6306-73

Income Tax

Year Ended	Deficiency
March 31, 1970	$ 34,303.60
March 31, 1971	33,409.08
March 31, 1972	564.63
Total	$ 68,277.31

Recomputation of tax liability has been prepared in accordance with the opinion of the United States Tax Court, filed May 9, 1977.

The details supporting the above computations are set forth on the attached pages 1 to 3 inclusive.

[Page 1]

Form 3613 (Rev. April 1974)	Department of the Treasury - Internal Revenue Service CORPORATION INCOME TAX	Statement Schedule 1

Name: Portland Cement Co. of Utah

	Tax Years Ended		
	3.31.70	3.31.71	3.31.72
Taxable Income as Shown in: ☐ Return as Filed ☐ Preliminary Letter Dated ☑ Statutory Notice Dated May 23, 1973	*950,532.00	*859,528.00	*1,513,661.00
Increases (or Decreases) in Income: (See attached explanation of items) From Sch. 2	⟨18,956.54⟩	⟨16,666.42⟩	⟨13,773.85⟩
Taxable Income as Revised	931,575.46	842,861.58	1,499,887.15
Tax Computation A. Less: Excess of Net Long-Term Capital Gain Over Net Short-Term Capital Loss (Alternative tax computation)			
B. ~~Income Subject to Tax~~ Sch. 3 - Tax	442,156.21	398,122.65	713,877.07
C. ~~Partial Tax for Income on Line B~~ surcharge			
D. ~~Alternative Tax for Years Beginning Before 1-1-75 — Per SEC. 1201 IRC~~ ✓ .0876712	38,764.27		
E. ~~Alternative Tax for Years Beginning After 12-31-74 — 30% of Line A~~ ✓ .0124657		4,962.59	
F. Other Taxes Inv. Cr. Recap. per return	307.79		
G. SUBTOTAL (Lines C, D or E, and F)	481,228.27	403,085.24	713,877.07
H. Tax Credits Investment per return	4,547.03	530.91	5,043.76
I. Income Tax Liability (Line G less Line H)	476,681.24	402,554.33	708,833.31
J. Income Tax Liability Shown on Return and Previous Increase (or Decrease) in Tax Return as filed	442,377.64	369,145.25	708,268.68
K. Increase (or Decrease) in Tax	34,303.60	33,409.08	564.63

GPO 875-[illegible]

Form 3613 (Rev. 4-74)

[Page 21

FORM 4087 JUNE 1967	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE ADJUSTMENTS TO INCOME (Supplemental Schedule)	STATEMENT SCHEDULE 2

NAME

Portland Cement Co. of Utah

INCREASES (DECREASES) IN INCOME:	TAXABLE YEAR ENDED 3.31.70	3.31.71	3.31.72
	$	$	$
(a) Depletion Expense			
Per statutory notice	135,870.00	110,479.00	175,184.00
As determined by Court	154,826.54	127,145.42	186,223.85
⟨Decrease⟩ income	⟨18,956.54⟩	⟨16,666.42⟩	⟨11,039.85⟩
(b) Other Deductions -			
Customer Entertaining			
To reverse SN			⟨2,734.00⟩
NET INCREASE (DECREASE) IN INCOME TO STATEMENT SCHEDULE 1	$ ⟨18,956.54⟩	$ ⟨16,666.42⟩	$ ⟨13,773.85⟩

Page 3 of 3 pages

FORM 4549-D (DECEMBER 1970)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

INCOME TAX AUDIT CHANGES Schedule 3

COMPUTATION OF ALTERNATIVE TAX - CORPORATIONS

TAXPAYER'S NAME: Portland Cement Co. of Utah

EMPLOYER IDENTIFICATION NUMBER:

		Year: 3-31-70	Year: 3-31-71	Year: 3-31-72
PART I Complete for all years	1. CORRECTED TAXABLE INCOME (From Sch. 1)	931,575.46	842,861.58	1,499,887.15
	2. NET LONG-TERM CAPITAL GAIN MINUS NET SHORT-TERM CAPITAL LOSS	-0-	7,437.50	5,937.50
	3. LINE 1 LESS LINE 2	931,575.46	835,424.08	1,493,949.65
	4. SURTAX EXEMPTION (Line 3, $25,000, or amount apportioned under section 1561, whichever is lesser)	25,000.00	25,000.00	25,000.00
	5. LINE 3 LESS LINE 4	906,575.46	810,424.08	1,468,949.65
	6. a. FOR YEARS ENDING BEFORE 1/1/70 - 25% OF LINE 2 b. FOR YEARS ENDING AFTER 12/31/69 - AMOUNTS FROM LINE 18	-0-	2,119.10	1,781.25
	7. 22 % (Year: 3-31-70) / 22 % (Year: 3-31-71) / 22 % (Year: 3-31-72) OF LINE 3	204,946.60	183,793.29	328,668.92
	8. 26 % (Year: 3-31-70) / 26 % (Year: 3-31-71) / 26 % (Year: 3-31-72) OF LINE 5	235,709.61	210,710.26	381,926.90
	9. IF MULTIPLE SURTAX EXEMPTION ELECTED UNDER SECTION 1562, ENTER 6% OF LINE 4	1,500.00	1,500.00	1,500.00
	10. ALTERNATIVE TAX (Add lines 6 through 9)	442,156.21	398,122.65	713,877.07
PART II Complete for all years ending after 12/31/69	11. NET LONG-TERM CAPITAL GAIN REDUCED BY ANY NET SHORT TERM CAPITAL LOSS	-0-	7,437.50	5,937.50
	12. LONG-TERM CAPITAL GAIN (section 1201 (d) IRC)*	-	-	-
	13. LINE 11 LESS LINE 12 (if less than zero, enter zero)	-0-	7,437.50	5,937.50
	14. 25% OF THE LESSER OF LINE 12 OR LINE 13	-0-	-0-	-0-
	15. a. FOR CALENDAR YEAR 1970 - 28% OF LINE 13 b. FOR CALENDAR YEARS 1971 THROUGH 1974 AND FISCAL YEARS ENDING IN 1972 THROUGH 1974 - 30% OF LINE 13 c. FOR FISCAL YEARS ENDING 1970 AND 1971 - AMOUNTS FROM LINES 19 & 22	-0-	2,119.10	1,781.25
	16. ADD LINES 14 AND 15 (enter on line 6, above)	-0-	2,119.10	1,781.25
PART III Complete only for fiscal year ending in 1970	17. AMOUNT ON LINE 13 x (NO. DAYS BEFORE 1/1/70 / 365) x 25%	-0-		
	18. AMOUNT ON LINE 13 x (NO. DAYS AFTER 12/31/69 / 365) x 28%	-0		
	19. ADD LINES 17 AND 18 (enter on line 15c, above)	-0-		
PART IV Complete only for a fiscal year ending in 1971	20. AMOUNT ON LINE 13 x (NO. DAYS BEFORE 1/1/71 / 365) x 28%		1,568.95	
	21. AMOUNT ON LINE 13 x (NO. DAYS AFTER 12/31/70 / 365) x 30%		550.15	
	22. ADD LINES 20 AND 21 (enter on line 15c, above)		2,119.10	

*Long term capital gains from certain binding contracts, distributions, and installment sales

FORM 4549-D (12-70)

STATEMENT OF ACCOUNT

SCHEDULE NUMBER 1

NAME Portland Cement Company of Utah

KIND OF TAX Income | DOCKET NUMBER 6306-73 | SYMBOLS AP: SLC: JAG

	TAXABLE YEAR ENDED					
	3.31.70		3.31.71		3.31.72	
	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT
REVISED LIABILITY		$476,681.24		$402,554.33		$708,833.31
ASSESSED (Disclosed by return)		442,377.64		369,145.25		708,268.68
ADDITIONAL ASSESSMENTS						
OVERASSESSMENTS						
TOTAL (Net) ASSESSMENTS		442,377.64		369,145.25		708,268.68
DEFICIENCY IN ASSESSMENT (Overassessment)		$ 34,303.60		$ 33,409.08		$ 564.63
REVISED LIABILITY		476,681.24		402,554.33		708,833.31
PAYMENTS	6.15.9	27,646.93	6.15.0	55,269.29	6.15.1	46,124.04
	7.16.9	40,000.00	7.14.0	90,000.00	7.13.1	100,000.00
	9.15.9	80,000.00	9.14.0	90,000.00	9.10.1	125,000.00
	12.15.9	175,000.00	12.15.0	90,000.00	12.14.1	200,000.00
	3.12.0	175,000.00	3.15.1	90,000.00	3.15.2	250,000.00
LESS REFUNDS OR CREDITS	6.15.0	55,269.29	6.15.1	46,124.04	6.16.2	12,855.36
TOTAL (Net) PAYMENTS		442,377.64		369,145.25		708,268.68
DEFICIENCY IN PAYMENT (Overpayment)		$ 34,303.60		$ 33,409.08		$ 564.63

TAXABLE YEAR ENDED	IR CODE REFERENCE SECTION	IR CODE REFERENCE YEAR	DATE RETURN FILED	DATE AGREEMENT EXECUTED	STATUTE EXTENDED TO	DATE DEFICIENCY NOTICE MAILED	DATE CLAIM FILED	AMOUNT OF CLAIM
		19__						
		19__						
		19__						

UNITED STATES TAX COURT

Docket No. 6306-73

PORTLAND CEMENT COMPANY OF UTAH, A CORPORATION, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

Pursuant to the opinion of the Court filed May 9, 1977, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from the petitioner for the taxable years ended March 31, 1970, March 31, 1971, and March 31, 1972, in the amounts of $34,303.60, $33,409.08, and $564.63, respectively.

/s/ _____
JUDGE.

ENTERED: Nov 22 1977

* * * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this

SERVED NOV 22, 1977

decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

STUART E. SEIGEL,
Chief Counsel,
Internal Revenue Service.

BY: /s/ _____
S. CLAY FREED
Assistant Regional Counsel
P.O. Box 2520
Salt Lake City, Utah 84110
Tel. No. (801) 524-5815
Date: November 7, 1977

/s/ _____
GLEN E. FULLER
Counsel for Petitioner
15 East Fourth South
Salt Lake City, Utah 84111
Tel. No. (801) 363-7187
Date: Nov. 14, 1977

Supreme Court of the United States

No. 79-1907

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

PORTLAND CEMENT COMPANY OF UTAH

ORDER ALLOWING CERTIORARI. Filed October 6, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

☆U.S. GOVERNMENT PRINTING OFFICE: 1980 331952 116